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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 142.

A. HOWARD RITTER, EXECUTOR OF WILLIAM M. RUNK,
DECEASED, PLAINTIFF IN ERROR,

vs.

THE MUTUAL LIFE INSURANCE COMPANY OF NEW
YORK.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE THIRD CIRCUIT.

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Transcript of Record.

United States Circuit Court of Appeals for the Third Circuit, September Term, 1895.

HOWARD A. RITTER, Executor of the Estate of Wm. M. Runk, Deceased, Plaintiff in Error, } No. 2.
vs.
THE MUTUAL LIFE INSURANCE — OF NEW YORK. }

In error to the circuit court of the United States in and for the eastern district of Pennsylvania.

Filed May 25, 1895.

1 UNITED STATES OF AMERICA, ss:

The President of the United States to the honorable the judges of the circuit court of the United States for the eastern district of Pennsylvania, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between A. Howard Ritter, a citizen of the State of Pennsylvania, executor of the estate of William M. Runk, deceased, and the Mutual Life Insurance Company of New York, a corporation of the State of New York, a manifest error hath happened, to the great damage of the said A. Howard Ritter, executor, &c., as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States circuit court of appeals for the third circuit, together with this writ, so that you have the same at the city of Philadelphia within thirty days, in the said United States circuit court of appeals, to be then and there held, that, the record and proceedings aforesaid being inspected, the said circuit court of appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia, the 30th day of April, in the year of our Lord one thousand eight hundred and ninety-five.

SAMUEL BELL,

*Clerk of the Circuit Court of the United States,
Eastern District of Pennsylvania.*

Allowed by—

WM. BUTLER, J.

UNITED STATES OF AMERICA, *ss*:

The President of the United States to the Mutual Life Insurance Company of New York, Greeting:

You are hereby cited and admonished to be and appear at a United States circuit court of appeals for the third circuit, to be holden at the city of Philadelphia within thirty days, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States in and for the eastern district of Pennsylvania in the third circuit, wherein A. Howard Ritter, a citizen of the State of Pennsylvania, executor of the estate of William M. Runk, deceased, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William Butler, judge, holding circuit court of the United States this 30th day of April, in the year of our Lord one thousand eight hundred and ninety-five.

WILLIAM BUTLER, J.

PHILADELPHIA, May 6, 1895.

We hereby accept service of the within citation, and request the clerk to enter an appearance for the defendant.

C. P. SHERMAN,
JOHN G. JOHNSON,
Per S.

In the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit.

A. HOWARD RITTER, Executor of the
Estate of William M. Runk, Deceased,
a Citizen of the State of Pennsylvania, }
vs. } No. 51. October Session,
THE MUTUAL LIFE INSURANCE COM- } 1892.
pany of New York, a Corporation of
the State of New York. }

UNITED STATES OF AMERICA, } *ss*:
Eastern District of Pennsylvania, }

Pleas and proceedings before the honorable the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, of October sessions, 1892, No. 51.

It is thus contained:

Be it remembered that on the tenth day of May, in the year of our Lord one thousand eight hundred and ninety-five, A. Howard Ritter, executor of the estate of William M. Runk, deceased, a citizen of the State of Pennsylvania, by George Tucker Bispham, Esquire, his attorney, comes into our court here and sues therefrom

a writ of summons against the Mutual Life Insurance Company of New York, a corporation of the State of New York, which with its return is in the words and figures following, to wit:

3 UNITED STATES }
Eastern District of Pennsylvania, } *sct:*

The President of the United States to the marshal of the eastern district of Pennsylvania, Greeting:

We command you, that you summon the Mutual Life Insurance Company of New York, a corporation of the State of New York, late of your district, if it may be found therein, so that it be and appear before the judges of the circuit court of the United States, in and for the eastern district of Pennsylvania, of the third circuit, at a session of the same court to be holden at Philadelphia, on the first Monday of March next, to answer to A. Howard Ritter, a citizen of the State of Pennsylvania, executor of the estate of William M. Runk, deceased, in a plea of assumpsit. And have you then there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia, this tenth day of February, A. D. 1893, and in the one hundred and seventeenth year of the Independence of the United States.

SAMUEL BELL,
Clerk of Circuit Court U. S.

Endorsed: No. 51. Circuit court, October session, 1892. A. Howard Ritter, ex'r of estate of Wm. M. Runk, dec'd, vs. The Mutual Life Ins. Co. of New York. Summons assumpsit. Returnable on the first Monday of March next. G. Tucker Bispham, attorney for plaintiff.

We accept service of the within writ and request the clerk to enter our appearance for defendant.

17 Feb., 1893.

C. P. SHERMAN.
 JOHN G. JOHNSON.

Plaintiff's Statement of Claim.

In the Circuit Court of the United States for the Eastern District of Pennsylvania.

A. HOWARD RITTER, Executor of the
 Estate of William M. Runk, Deceased,
 a Citizen of the State of Pennsylvania, }
 vs. } October Sessions, 1892.
 THE MUTUAL LIFE INSURANCE COM-
 pany of New York, a Corporation of } No. 51.
 the State of New York.

Plaintiff's statement of claim.

The plaintiff brings this action to recover from the defendant the sum of seventy-five thousand dollars, with interest thereon from the

14th day of October, 1892, due the plaintiff by the defendant under the following circumstances:

4 On the tenth day of November, 1891, the defendant, The Mutual Life Insurance Company of New York, entered into contracts of insurance upon the life of William M. Runk, of the city of Philadelphia and State of Pennsylvania, and issued to the said William M. Runk six certain policies of insurance upon the life of the said William M. Runk, all bearing date on the said tenth day of November, 1891; four of the said policies being for ten thousand dollars each, one for fifteen thousand dollars, and one for twenty thousand dollars. The amount of such insurance being in all seventy-five thousand dollars.

In and by each of the said policies the defendant agreed and contracted, in consideration of the payment by the said William M. Runk of certain annual premiums named in each one thereof, to pay to the executors, administrators or assigns of the said William M. Runk the sum named in each of said policies respectively upon proof of the death of the said William M. Runk. No assignment or disposition by will or otherwise of any of the said policies, or of any interest or title therein, was made by the said William M. Runk.

All of the said policies of insurance are in the possession of the plaintiff as executor aforesaid, and copies thereof are hereto attached and made part of this statement of claim.

The said William M. Runk paid the premium upon all of said policies to the said defendant, as required by the terms of the contract therein contained, up to the time of his death, as hereinafter set forth.

On or about the 5th day of October, 1892, the said William M. Runk died at St. David's, in the county of Montgomery, State of Pennsylvania. Prior to the death of the said William M. Runk he had duly made and published his last will and testament, dated the 8th day of December, A. D. 1890. In and by the said will the said testator did name and appoint his wife, Evelyn T. B. Runk, and A. Howard Ritter, his executors and trustees under the said will. The said Evelyn T. B. Runk, subsequent to the death of the said William M. Runk, renounced her office as said executor and trustee, and the said A. Howard Ritter thereby became sole executor and trustee under the will of the said William M. Runk.

The said will was duly probated in the office of the register of wills for the city and county of Philadelphia, and letters testamentary thereon were granted to the said A. Howard Ritter on the 8th day of October, 1892.

Thereafter, to wit, upon the 14th day of October, 1892, the said A. Howard Ritter, as said executor, submitted and furnished to the agents of the Mutual Life Insurance Company of New York, due proofs in writing of the death of the said William M. Runk, in accordance with the terms of the said policies, and demanded from said The Mutual Life Insurance Company of New York the payment by it of the amounts of each of the said policies, to wit, the sum of seventy-five thousand dollars in all. The said policies in

the said amount thereupon became and were due and payable by the defendant to the plaintiff.

5 The said The Mutual Life Insurance Company of New York, nevertheless, refused and continues to refuse to pay the amount due the plaintiff as said executor upon the said policies.

Wherefore the plaintiff brings this suit to recover from the defendant the amount named in each of the said policies, amounting in all to the said sum of seventy-five dollars, with interest thereon from the said 14th day of October, 1892, the date of the said demand.

GEO. TUCKER BISPHAM,
J. H. BARNES,

Attorney for Plaintiff.

STATE OF PENNSYLVANIA, {
County of Philadelphia, }^{ss}:

A. Howard Ritter, being duly sworn according to law, deposes and says that he is the plaintiff in the above-named action, and that the facts set forth therein are true.

A. HOWARD RITTER, *Executor.*

Sworn and subscribed before me this twenty-eighth day of August, A. D. 1893.

[SEAL.]

CHAS. F. MYERS,
Notary Public.

Man's life—annual premium, \$782.00.

The receipt of the first payment of premium hereon is acknowledged. W. J. Easton, secretary. Twenty-years' distribution policy.

No. 472,692.

The Mutual Life Insurance Company of New York.

Age, 45 years.

Amount, \$20,000.

In consideration of the application for this policy, which is hereby made a part of this contract, the Mutual Life Insurance Company of New York promises to pay at its home office in the city of New York, unto William M. Runk, of Philadelphia, in the county of Philadelphia, State of Pennsylvania, his executors, administrators or assigns, twenty thousand dollars, upon acceptance of satisfactory proofs at its home office of the death of the said William M. Runk during the continuance of this policy, upon the following condition, and subject to the provisions, requirements and benefits stated on the back of this policy, which are hereby referred to and made part hereof.

The annual premium of seven hundred and eighty-two dollars shall be paid in advance on the delivery of this policy, and thereafter to the company, at its home office in the city of New York, on the tenth day of November in every year during the continuance of this contract.

In witness whereof, the said The Mutual Life Insurance Company of New York, has caused this policy to be signed by
6 its president and secretary, at its office in the city of New York, the tenth day of November, A. D. one thousand eight hundred and ninety-one.

RICHARD A. McCURDY, *President.*

R. G. DICKSON,
Act'g Ass't Sec'y.

Provisions, Requirements, and Benefits.

Payment of premiums.—Each premium is due and payable at the home office of the company in the city of New York, but will be accepted elsewhere when duly paid in exchange for the company's receipt signed by the president or secretary. Notice that each and every such payment is due at the date named in the policy, is given and accepted by the delivery and acceptance of this policy, and any further notice, required by any statute, is thereby expressly waived. That part of the year's premium, if any, which is not due and is unpaid at the maturity of this contract shall be deducted from the amount of the claim. If this policy shall become void by non-payment of premium, all payments previously made shall be forfeited to the company except as hereinafter provided.

Dividends.—This policy is issued on the twenty-year distribution plan. It will be credited with its distributive share of surplus apportioned at the expiration of twenty years from the date of issue. Only twenty-year distribution policies in force at the end of such term, and entitled thereto by year of issue shall share in such distribution of the surplus; and no other distribution to such policies shall be made at any previous time. All surplus so apportioned may be applied at the end of such period to purchase an annuity, or may then be drawn in cash. After the expiration of the period of twenty years hereinabove provided for, the dividend distribution periods shall be changed to terms of five years each during the continuance of this policy. The surplus may be applied at each distribution to purchase additional insurance without medical examination, provided such application of the surplus be elected in due form not less than two years before the end of the first dividend period of twenty years; otherwise a satisfactory examination will be required for each such application of the surplus. But should the owner of the policy at the end of said first period of twenty years or at the end of any subsequent period of five years elect to receive the dividends annually, the surplus applicable on this policy will thereafter be apportioned at the beginning of each year on the anniversary of the date of this policy and may be applied as hereinbefore provided.

Paid-up policy.—After three full annual premiums have been paid upon this policy, the company will, upon the legal surrender thereof before default in payment of any premium, or within six months thereafter, issue a non-participating policy for a paid-up insurance, payable as herein provided, for the amount required by

the provisions of the act of May 21, 1879, chap. 347, Laws of the State of New York.

7 Surrender for cash value.—This policy may be surrendered to the company at the end of the said first period of twenty years, and the full reserve computed by the American table of mortality and four per cent. interest, and the surplus, as defined above, will be paid therefor in cash.

Surrender for life income.—Or if this policy be surrendered, as above provided, the total cash value may at the option of the policy-holder be applied to the purchase of an annuity for life, according to the published rates of the company at the time of such surrender.

Insurance with annuity.—If the policy be surrendered at the end of the first dividend period, as above provided, the company will, if requested in writing, apply its cash value, including surplus, or any part of such value, to purchase, without medical examination, a paid-up policy for the same amount as the value so applied, securing insurance for life and participating annually in dividends, together with a paid-up annuity for life equal to three and one-half per cent. per annum of the amount of the paid-up insurance payments of the annuity, to commence one year after the end of said first dividend period.

Incontestability.—It is hereby further promised and agreed that after two years from the date hereof, the only conditions which shall be binding upon the holder of this policy are that he shall pay the premiums at the times and place and in the manner stipulated in said policy, and that the requirements of the company as to age, and military or naval service in time of war shall be observed, and that in all other respects, if this policy matures after the expiration of the said two years, the payment of the sum insured by this policy shall not be disputed.

Notice to the holder of this policy.—No agent has power on behalf of the company to make or modify this or any contract of insurance, to extend the time for paying a premium, to bind the company by making any promise, or by receiving any representation or information not contained in the application.

Assignments.—The company declines to notice any assignment of this policy until the original assignment or a duplicate or certified copy thereof shall be filed in the company's home office. The company will not assume any responsibility for the validity of an assignment.

38 B
Man's life.
Twenty-year dist.
Aug., 1891.

Express condition and agreement
that the said party whose life
is hereby insured shall always
wear a suitable truss.

Man's life—annual premium, \$391.00.

The receipt of first payment of premium hereon is acknowledged.
W. J. Easton, secretary. Twenty-year distribution policy.

8

No. 472,694.

The Mutual Life Insurance Company of New York.

Age, 45 years.

Amount, \$10,000.

In consideration of the application for this policy, which is hereby made a part of this contract, the Mutual Life Insurance Company of New York promises to pay at its home office, in the city of New York, unto William M. Runk of Philadelphia, in the county of Philadelphia, State of Pennsylvania, his executors, administrators or assigns, ten thousand dollars, upon acceptance of satisfactory proofs, at its home office, of the death of said William M. Runk, during the continuance of this policy, upon the following condition, and subject to the provisions, requirements and benefits stated on the back of this policy, which are hereby referred to and made part hereof:

The annual premium of three hundred and ninety-one dollars shall be paid in advance on the delivery of this policy, and thereafter to the company, at its home office in the city of New York, on the tenth day of November in every year during the continuance of this contract.

In witness whereof, the said The Mutual Life Insurance Company of New York has caused this policy to be signed by its president and secretary, at its office in the city of New York, the tenth day of November, A. D. one thousand eight hundred and ninety-one.

RICHARD A. McCURDY, *President.*

R. G. DICKSON,
Act'g Ass't Secretary.

Provisions, Requirements, and Benefits.

Payment of premiums.—Each premium is due and payable at the home office of the company in the city of New York; but will be accepted elsewhere when duly paid in exchange for the company's receipt signed by the president or secretary. Notice that each and every such payment is due at the date named in the policy is given and accepted by the delivery and acceptance of this policy, and any further notice, required by any statute, is thereby expressly waived. That part of the year's premium, if any, which is not due and is unpaid at the maturity of this contract shall be deducted from the amount of the claim. If this policy shall become void by non-payment of premium, all payments previously made shall be forfeited to the company except as hereinafter provided.

Dividends.—This policy is issued on the twenty-year distribution plan. It will be credited with its distributive share of surplus apportioned at the expiration of twenty years from the date of issue.

Only twenty-year distribution policies in force at the end of such term, and entitled thereto by year of issue, shall share in such distribution of the surplus; and no other distribution to such policies shall be made at any previous time. All surplus so apportioned 9 may be applied at the end of such period to purchase an annuity, or may then be drawn in cash. After the expiration of the period of twenty years hereinabove provided for, the dividend distribution periods shall be changed to terms of five years each during the continuance of this policy. The surplus may be applied at each distribution to purchase additional insurance without medical examination, provided such application of the surplus be elected in due form not less than two years before the end of the first dividend period of twenty years, otherwise a satisfactory examination will be required for each such application of the surplus. But should the owner of the policy at the end of said first period of twenty years, or at the end of any subsequent period of five years, elect to receive the dividends annually, the surplus applicable on this policy will thereafter be apportioned at the beginning of each year on the anniversary of the date of this policy, and may be applied as hereinbefore provided.

Paid-up policy.—After three full annual premiums have been paid upon this policy, the company will, upon the legal surrender thereof before default in payment of any premium, or within six months thereafter, issue a non-participating policy for a paid-up insurance, payable as herein provided, for the amount required by the provisions of the act of May 21, 1879, chap. 347, Laws of the State of New York.

Surrender for cash value.—This policy may be surrendered to the company at the end of the said first period of twenty years, and the full reserve computed by the American table of mortality and four per cent. interest, and the surplus as defined above, will be paid therefor in cash.

Surrender for life income.—Or, if this policy be surrendered, as above provided, the total cash value may at the option of the policy-holder be applied to the purchase of an annuity for life, according to the published rates of the company at the time of such surrender.

Insurance with annuity.—If the policy be surrendered at the end of the first dividend period as above provided, the company will, if requested in writing, apply its cash value, including surplus, or any part of such value, to purchase, without medical examination, a paid-up policy for the same amount as the value so applied, securing insurance for life and participating annually in dividends, together with a paid-up annuity for life equal to three and one-half per cent. per annum of the amount of the paid-up insurance payments of the annuity to commence one year after the end of said first dividend period.

Incontestability.—It is hereby further promised and agreed that after two years from the date hereof, the only conditions which shall be binding upon the holder of this policy are that he shall pay the premiums at the times and places and in the manner stipulated in said policy, and that the requirements of the company as to age and

military or naval service in time of war shall be observed, and that in all other respects, if this policy matures after the expiration of the said two years, the payment of the sum insured by this policy shall not be disputed.

10 Notice to the holder of this policy.—No agent has power on behalf of the company to make or modify this or any contract of insurance, to extend the time for paying a premium, to bind the company by making any promise or by receiving any representation or information not contained in the application.

Assignments.—The company declines to notice any assignment of this policy until the original assignment or a duplicate or certified copy thereof shall be filed in the company's home office. The company will not assume any responsibility for the validity of an assignment.

38 B.	Express condition and agreement
Man's life.	that the said party whose life
Twenty-year dist.	is hereby insured shall always
Aug., 1891.	wear a suitable truss.

Man's life—annual premium, \$391.00.

The receipt of the first payment of premium hereon is acknowledged. W. J. Easton, secretary. Twenty-year distribution policy.

No. 472,696.

The Mutual Life Insurance Company of New York.

Age, 45 years.	Amount, \$10,000.
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In consideration of the application for this policy, which is hereby made a part of this contract, the Mutual Life Insurance Company of New York promises to pay at its home office, in the city of New York, unto William M. Runk of Philadelphia, in the county of Philadelphia, State of Pennsylvania, his executors, administrators or assigns, ten thousand dollars, upon acceptance of satisfactory proofs, at its home office, of the death of said William M. Runk during the continuance of this policy, upon the following condition, and subject to the provisions, requirements and benefits stated on the back of this policy, which are hereby referred to and made part hereof:

The annual premium of three hundred and ninety-one dollars shall be paid in advance on the delivery of this policy, and thereafter to the company, at its home office in the city of New York, on the tenth day of November in every year during the continuance of this contract.

In witness whereof, the said The Mutual Life Insurance Company of New York has caused this policy to be signed by its president and secretary, at its office in the city of New York, the tenth day of November, A. D. one thousand eight hundred and ninety-one.

RICHARD A. McCURDY, President.

R. G. DICKSON,
Act'g Ass't Secretary.

Provisions, Requirements, and Benefits.

Payment of premiums.—Each premium is due and payable at the home office of the company, in the city of New York, but will be accepted elsewhere when duly paid in exchange for the company's receipt, signed by the president or secretary. Notice that each and every such payment is due at the date named in the policy, is given and accepted by the delivery and acceptance of this policy, and any further notice, required by any statute, is thereby expressly waived. That part of the year's premium, if any, which is not due and is unpaid at the maturity of this contract shall be deducted from the amount of the claim. If this policy shall become void by non-payment of premium, all payments previously made shall be forfeited to the company, except as hereinafter provided.

Dividends.—This policy is issued on the twenty-year distribution plan. It will be credited with its distributive share of surplus apportioned at the expiration of twenty years from the date of issue. Only twenty-year distribution policies in force at the end of such term, and entitled thereto by year of issue, shall share in such distribution of the surplus, and no other distribution to such policies shall be made at any previous time. All surplus so apportioned may be applied at the end of such period to purchase an annuity, or may then be drawn in cash. After the expiration of the period of twenty years hereinabove provided for, the dividend distribution periods shall be changed to terms of five years each during the continuance of this policy. The surplus may be applied at each distribution to purchase additional insurance without medical examination, provided such application of the surplus be elected in due form not less than two years before the end of the first dividend period of twenty years, otherwise a satisfactory examination will be required for each such application of the surplus. But should the owner of the policy at the end of said first period of twenty years, or at the end of any subsequent period of five years elect to receive the dividends annually, the surplus applicable on this policy will thereafter be apportioned at the beginning of each year on the anniversary of the date of this policy, and may be applied as herein-before provided.

Paid-up policy.—After three full annual premiums have been paid upon this policy, the company will, upon the legal surrender thereof before default in any payment of any premium, or within six months thereafter, issue a non-participating policy for a paid-up insurance, payable as herein provided, for the amount required by the provisions of the act of May 21, 1879, chap. 347, Laws of the State of New York.

Surrender for cash value.—This policy may be surrendered to the company at the end of the said first period of twenty years, and the full reserve computed by the American table of mortality and four per cent. interest, and the surplus as defined above, will be paid therefor in cash.

Surrender for life income.—Or if this policy be surrendered as

12 above provided, the total cash value may at the option of the policy-holder be applied to the purchase of an annuity for life, according to the published rates of the company at the time of such surrender.

Insurance with annuity.—If the policy be surrendered at the end of the first dividend period as above provided, the company will, if requested in writing, apply its cash value, including surplus, or any part of such value, to purchase, without medical examination, a paid-up policy for the same amount as the value so applied, securing insurance for life and participating annually in dividends, together with a paid-up annuity for life equal to three and one-half per cent. per annum of the amount of the paid-up insurance payments of the annuity to commence one year after the end of said first dividend period.

Incontestability.—It is hereby further promised and agreed that after two years from the date hereof, the only conditions which shall be binding upon the holder of this policy are that he shall pay the premiums at the times and place and in the manner stipulated in said policy, and that the requirements of the company as to age and military or naval service in time of war shall be observed, and that in all other respects, if this policy matures after the expiration of the said two years, the payment of the sum insured by this policy shall not be disputed.

Notice to the holder of this policy.—No agent has power on behalf of the company to make or modify this or any contract of insurance, to extend the time for paying a premium, to bind the company by making any promise, or by receiving any representation or information not contained in the application.

Assignments.—The company declines to notice any assignment of this policy until the original assignment or a duplicate or certified copy thereof shall be filed at the company's home office. The company will not assume any responsibility for the validity of an assignment.

38 B.
Man's life.
Twenty-year dist.
Aug., 1891.

Express condition and agreement
that the said party whose life
is hereby insured shall always
wear a suitable truss.

Man's life—annual premium, \$391.00.

The receipt of the first payment of the premium hereon is acknowledged. W. J. Easton, secretary. Twenty-year distribution policy.

No. 472,698.

The Mutual Life Insurance Company of New York.

Age, 45 years.

Amount, \$10,000.

In consideration of the application for this policy, which is hereby made a part of this contract, the Mutual Life Insurance Company of New York promises to pay at its home office, in the city of New

13 York, unto William M. Runk, of Philadelphia, in the county of Philadelphia, State of Pennsylvania, his executors, administrators, or assigns, ten thousand dollars, upon acceptance of satisfactory proofs at his home office of the death of said William M. Runk, during the continuance of this policy, upon the following condition, and subject to the provisions, requirements, and benefits stated on the back of this policy, which are hereby referred to and made part hereof:

The annual premium of three hundred and ninety-one dollars shall be paid in advance on the delivery of this policy, and thereafter to the company at its home office in the city of New York, on the tenth day of November in every year during the continuance of this contract.

In witness whereof, the said The Mutual Life Insurance Company of New York, has caused this policy to be signed by its president and secretary, at its office in the city of New York, the tenth day of November, A. D. one thousand eight hundred and ninety-one.

RICHARD A. McCURDY, *President.*

R. G. DICKSON,
Act'g Ass't Secretary.

Provisions, Requirements, and Benefits.

Payment of premiums.—Each premium is due and payable at the home office of the company in the city of New York, but will be accepted elsewhere when duly paid in exchange for the company's receipt signed by the president or secretary. Notice that each and every such payment is due at the date named in the policy is given and accepted by the delivery and acceptance of this policy, and any further notice, required by any statute, is thereby expressly waived. That part of the year's premium, if any, which is not due and is unpaid at the maturity of this contract shall be deducted from the amount of the claim. If this policy shall become void by non-payment of premium, all payments previously made shall be forfeited to the company except as hereinafter provided.

Dividends.—This policy is issued on the twenty-year distribution plan. It will be credited with its distributive share of surplus apportioned at the expiration of twenty years from the date of issue. Only twenty-year distribution policies in force at the end of such term, and entitled thereto by year of issue, shall share in such distribution of the surplus, and no other distribution to such policies shall be made at any previous time. All surplus so apportioned may be applied at the end of such period to purchase an annuity, or may then be drawn in cash. After the expiration of the period of twenty years hereinabove provided for, the dividend distribution periods shall be changed to terms of five years each during the continuance of this policy. The surplus may be applied at each distribution to purchase additional insurance without medical examination, provided such application of the surplus be elected in due form not less than two years before the end of the

14 first dividend period of twenty years; otherwise a satisfactory examination will be required for each such application of the surplus. But should the owner of the policy at the end of said first period of twenty years, or at the end of any subsequent period of five years, elect to receive the dividends annually, the surplus applicable on this policy will thereafter be apportioned at the beginning of each year on the anniversary of the date of this policy, and may be applied as hereinbefore provided.

Paid-up policy.—After three full annual premiums have been paid upon this policy, the company will, upon the legal surrender thereof before default in payment of any premium, or within six months thereafter, issue a non-participating policy for a paid-up insurance, payable as herein provided, for the amount required by the provisions of the act of May 21, 1879, chap. 347, Laws of the State of New York.

Surrender for cash value.—This policy may be surrendered to the company at the end of the said first period of twenty years, and the full reserve computed by the American table of mortality and four per cent. interest, and the surplus as defined above, will be paid therefor in cash.

Surrender for life income.—Or, if this policy be surrendered as above provided, the total cash value may at the option of the policy-holder be applied to the purchase of an annuity for life, according to the published rates of the company at the time of such surrender.

Insurance with annuity.—If the policy be surrendered at the end of the first dividend period, as above provided, the company will, if requested in writing, apply its cash value, including surplus, or any part of such value, to purchase, without medical examination, a paid-up policy for the same amount as the value so applied, securing insurance for life and participating annually in dividends, together with a paid-up annuity for life equal to three and one-half per cent. per annum of the amount of the paid-up insurance payments of the annuity, to commence one year after the end of said first dividend period.

Incontestability.—It is hereby further promised and agreed that after two years from the date hereof, the only conditions which shall be binding upon the holder of this policy are that he shall pay the premiums at the times and place and in the manner stipulated in said policy, and that the requirements of the company as to age and military or naval service in time of war shall be observed, and that in all other respects, if this policy matures after the expiration of the said two years, the payment of the sum insured by this policy shall not be disputed.

Notice to the holder of this policy.—No agent has power on behalf of the company to make or modify this or any contract of insurance, to extend the time for paying a premium, to bind the company by making any promise, or by receiving any representation or information not contained in the application.

Assignments.—The company declines to notice any assignment

15 of this policy until the original assignment or a duplicate or certified copy thereof shall be filed in the company's home office. The company will not assume any responsibility for the validity of an assignment.

38 B.	Express condition and agreement
Man's life.	that the said party whose life
Twenty-year dist.	is hereby insured shall always
Aug., 1891.	wear a suitable truss.

Man's life—annual premium, \$391.00.

The receipt of the first payment of the premium hereon is acknowledged. W. J. Easton, secretary. Twenty-year distribution policy.

No. 472,700.

The Mutual Life Insurance Company of New York.

Age, 45 years.

Amount, \$10,000.

In consideration of the application for this policy, which is hereby made a part of this contract, the Mutual Life Insurance Company of New York promises to pay at its home office, in the city of New York, unto William M. Runk of Philadelphia, in the county of Philadelphia, State of Pennsylvania, his executors, administrators or assigns, ten thousand dollars, upon acceptance of satisfactory proofs, at its home office, of the death of said William M. Runk during the continuance of this policy, upon the following condition, and subject to the provisions, requirements and benefits stated on the back of this policy, which are hereby referred to and made part hereof:

The annual premium of three hundred and ninety-one dollars shall be paid in advance on the delivery of this policy, and thereafter to the company, at its home office in the city of New York, on the tenth day of November in every year during the continuance of this contract.

In witness whereof, the said The Mutual Life Insurance Company of New York has caused this policy to be signed by its president and secretary, at its office in the city of New York, the tenth day of November, A. D. one thousand eight hundred and ninety-one.

RICHARD A. McCURDY, *President.*

R. G. DICKSON,
Act'g Ass't Secretary.

Provisions, Requirements, and Benefits.

Payment of premiums.—Each premium is due and payable at the home office of the company, in the city of New York, but will be accepted elsewhere when duly paid in exchange for the company's receipt, signed by the president or secretary. Notice that each and every such payment is due at the date named in the policy, is given

and accepted by the delivery and acceptance of this policy, and any further notice, required by any statute, is thereby expressly 16 waived. That part of the year's premium, if any, which is not due and is unpaid at the maturity of this contract shall be deducted from the amount of the claim. If this policy shall become void by non-payment of premium, all payments previously made shall be forfeited to the company except as hereinafter provided.

Dividends.—This policy is issued on the twenty-year distribution plan. It will be credited with its distributive share of surplus apportioned at the expiration of twenty years from the date of issue. Only twenty-year distribution policies in force at the end of such term, and entitled thereto by year of issue shall share in such distribution of the surplus, and no other distribution to such policies shall be made at any previous time. All surplus so apportioned may be applied at the end of such period to purchase an annuity, or may then be drawn in cash. After the expiration of the period of twenty years hereinabove provided for, the dividend distribution period shall be changed to terms of five years each during the continuance of this policy. The surplus may be applied at each distribution to purchase additional insurance without medical examination, provided such application of the surplus be elected in due form not less than two years before the end of the first dividend period of twenty years, otherwise a satisfactory examination will be required for each such application of the surplus. But should the owner of the policy at the end of said first period of twenty years, or at the end of any subsequent period of five years, elect to receive the dividends annually, the surplus applicable on this policy will thereafter be apportioned at the beginning of each year on the anniversary of the date of this policy, and may be applied as hereinbefore provided.

Paid-up policy.—After three full annual premiums have been paid upon this policy, the company will, upon the legal surrender thereof before default in payment of any premium, or within six months thereafter, issue a non-participating policy for a paid-up insurance, payable as herein provided, for the amount required by the provisions of the act of May 21, 1879, chap. 347, Laws of the State of New York.

Surrender for cash value.—This policy may be surrendered to the company at the end of the said first period of twenty years, and the full reserve computed by the American table of mortality and four per cent. interest, and the surplus as defined above, will be paid therefor in cash.

Surrender for life income.—Or if this policy be surrendered as above provided, the total cash value may at the option of the policy-holder be applied to the purchase of an annuity for life, according to the published rates of the company at the time of such surrender.

Insurance with annuity.—If the policy be surrendered at the end of the first dividend period, as above provided, the company will, if requested in writing, apply its cash value, including surplus, or

any part of such value, to purchase, without medical examination, a paid-up policy for the same amount as the value so applied, securing insurance for life and participating annually in dividends, together with a paid-up annuity for life equal to three and one-half per cent. per annum of the amount of the paid-up insurance payments of the annuity to commence one year after the end of said first dividend period.

17 Incontestability.—It is hereby further promised and agreed that after two years from the date hereof, the only conditions which shall be binding upon the holder of this policy are that he shall pay the premiums at the times and place and in the manner stipulated in said policy, and that the requirements of the company as to age, and military or naval service in time of war shall be observed, and that in all other respects, if this policy matures after the expiration of the said two years, the payment of the sum insured by this policy shall not be disputed.

Notice to the holder of this policy.—No agent has power on behalf of the company to make or modify this or any contract of insurance, to extend the time for paying a premium, to bind the company by making any promise, or by receiving any representation or information not contained in the application.

Assignments.—The company declines to notice any assignment of this policy until the original assignment or a duplicate or certified copy thereof shall be filed in the company's home office. The company will not assume any responsibility for the validity of an assignment.

38 B. Man's life. Twenty-year dist. Aug., 1891.	Express condition and agreement that the said party whose life is hereby insured shall always wear a suitable truss.
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Man's life—annual premium, \$586.50.

The receipt of the first payment of premium hereon is acknowledged. W. J. Easton, secretary. Twenty-year distribution policy.

No. 472,702.

The Mutual Life Insurance Company of New York.

Age, 45 years.

Amount, \$15,000.

In consideration of the application for this policy, which is hereby made a part of this contract, the Mutual Life Insurance Company of New York promises to pay at its home office, in the city of New York, unto William M. Runk, of Philadelphia, in the county of Philadelphia, and State of Pennsylvania, his executors, administrators or assigns, fifteen thousand dollars, upon acceptance of satisfactory proofs at its home office, of the death of said William M. Runk during the continuance of this policy, upon the following condition, and subject to the provisions, requirements and benefits stated on the back of this policy, which are hereby referred to and made part hereof:

The annual premium of five hundred and eighty-six dollars and fifty cents shall be paid in advance on the delivery of this policy, and thereafter to the company, at its home office, in the city of New York, on the tenth day of November in every year during the continuance of this contract.

18 In witness whereof, the said The Mutual Life Insurance Company of New York has caused this policy to be signed by its president and secretary, at its office in the city of New York, the tenth day of November, A. D. one thousand eight hundred and ninety-one.

RICHARD A. McCURDY, *President.*

R. G. DICKSON,
Act'g Ass't Secretary.

Provisions, Requirements, and Benefits.

Payment of premiums.—Each premium is due and payable at the home office of the company, in the city of New York, but will be accepted elsewhere when duly paid in exchange for the company's receipt, signed by the president or secretary. Notice that each and every such payment is due at the date named in the policy is given and accepted by the delivery and acceptance of this policy, and any further notice, required by any statute, is thereby expressly waived. That part of the year's premium, if any, which is not due and is unpaid at the maturity of this contract shall be deducted from the amount of the claim. If this policy shall become void by non-payment of premium, all payments previously made shall be forfeited to the company, except as hereinafter provided.

Dividends.—This policy is issued on the twenty-year distribution plan. It will be credited with its distributive share of surplus apportioned at the expiration of twenty years from the date of issue. Only twenty-year distribution policies in force at the end of such term, and entitled thereto by year of issue, shall share in such distribution of the surplus, and no other distribution to such policies shall be made at any previous time. All surplus so apportioned may be applied at the end of such period to purchase an annuity, or may then be drawn in cash. After the expiration of the period of twenty years hereinabove provided for, the dividend distribution periods shall be changed to terms of five years each during the continuance of this policy. The surplus may be applied at each distribution to purchase additional insurance without medical examination, provided such application of the surplus be elected in due form not less than two years before the end of the first dividend period of twenty years, otherwise a satisfactory examination will be required for each such application of the surplus. But should the owner of the policy at the end of said first period of twenty years, or at the end of any subsequent period of five years elect to receive the dividends annually, the surplus applicable on this policy will thereafter be apportioned at the beginning of each year on the anniversary of the date of this policy, and may be applied as hereinbefore provided.

19 Paid-up policy.—After three full annual premiums have been paid upon this policy, the company will, upon the legal surrender thereof before default in payment of any premium, or within six months thereafter, issue a non-participating policy for a paid-up insurance, payable as herein provided, for the amount required by the provisions of the act of May 21, 1879, chap. 347, Laws of the State of New York.

Surrender for cash value.—This policy may be surrendered to the company at the end of the said first period of twenty years, and the full reserve computed by the American table of mortality and four per cent. interest, and the surplus, as defined above, will be paid therefor in cash.

Surrender for life income.—Or if this policy be surrendered as above provided, the total cash value may, at the option of the policy-holder be applied to the purchase of an annuity for life, according to the published rates of the company at the time of such surrender.

Insurance with annuity.—If the policy be surrendered at the end of the first dividend period, as above provided, the company will, if requested in writing, apply its cash value, including surplus, or any part of such value, to purchase, without medical examination, a paid-up policy for the same amount as the value so applied, securing insurance for life and participating annually in dividends, together with a paid-up annuity for life equal to three and one-half per cent. per annum of the amount of the paid-up insurance payments of the annuity, to commence one year after the end of said first dividend period.

Incontestability.—It is hereby further promised and agreed that after two years from the date hereof, the only conditions which shall be binding upon the holder of this policy are that he shall pay the premiums at the times and place and in the manner stipulated in said policy, and that the requirements of the company as to age and military or naval service in time of war shall be observed, and that in all other respects, if this policy matures after the expiration of the said two years, the payment of the sum insured by this policy shall not be disputed.

Notice to the holder of this policy.—No agent has power on behalf of this company to make or modify this or any contract of insurance, to extend the time for paying a premium, to bind the company by making any promise, or by receiving any representation or information not contained in the application.

Assignments.—The company declines to notice any assignment of this policy until the original assignment or a duplicate or certified copy thereof shall be filed in the company's home office. The company will not assume any responsibility for the validity of an assignment.

38 B.
Man's life.
Twenty-year dist.
Aug., 1891.

Express condition and agreement
that the said party whose life
is hereby insured shall always
wear a suitable truss.

20 Endorsed: No. 51, October sess., 1892, C. C. U. S. A. Howard
Ritter, exec'r estate of William M. Runk, deceased, *vs.* The
Mutual Life Ins. Co. of New York. Plaintiff's statement of claim.
Filed Aug. 28, 1893. Samuel Bell, clerk. Bispham.

Affidavit of Defence.

Circuit Court of the U. S., Eastern District of Penna.

A. HOWARD RITTER, Executor of the Estate
of William M. Runk, Dec'd,
vs.
THE MUTUAL LIFE INSURANCE COMPANY
OF NEW YORK.

CITY OF NEW YORK, ss:

William J. Easton, being duly sworn, deposes and says, that he is the secretary of the corporation defendant. As such it is his duty to inform himself concerning matters connected with claims upon insurance policies issued by his corporation. He is informed, believes, and therefore avers, that the corporation defendant has a just and true defence to the whole of the claim sued upon, and that it owes the plaintiff nothing. Its defence is of the following character, which he states not upon his personal knowledge, but upon information and belief. He believes this statement of defence to be true, and that the corporation defendant, upon the trial of the cause, will be able to establish its truth by competent testimony.

The defendant is a corporation duly chartered and organized under the laws of the State of New York.

1. At or about the time of execution of the seven policies of insurance upon which suit is founded, there were policies of insurance in the possession of said Runk, upon his life, to the extent of three hundred and fifteen thousand dollars, which had been issued to him by other insurance companies. Subsequently to the execution of the policies sued upon during the year 1892, additional insurance upon his life was effected by the said Runk to a considerable amount. At or about the time of the death of said Runk the total amount of insurance upon his life, of which he was the holder, was five hundred thousand dollars.

Prior to the time of his decease, and, it is believed, prior to the effecting of said additional insurance of two hundred thousand dollars upon his life, said Runk was indebted in a very large amount by reason of his improper use of moneys which had been intrusted

21 to him in a fiduciary and in a quasi-fiduciary capacity. The exact amount of this indebtedness it is impossible to state.

It is believed, however, that he was thus indebted to the extent of several thousand dollars. He was insolvent and without resources of his own sufficient to meet the amount of said indebtedness. He was confronted with the fear of being convicted of his breach of trust, and he was desirous to protect, pecuniarily, those whom he had injured. He deliberately determined to commit

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

suicide for the purpose of escaping the necessity of meeting those whose confidence he had betrayed and, I believe, with the intention, through moneys which he expected to be paid under his policies of insurance, to liquidate, wholly or in part, the indebtedness owing by him.

On or about the 5th day of October, 1892, he deliberately committed suicide, intending to kill himself, at a time when he was of sound mind, and in the full possession of his mental faculties. This suicide was not the result of mental unsoundness and was not occasioned by mental unsoundness. It was the deliberate act of a man mentally and morally able to understand all the consequences of his act.

2. The policies of insurance sued upon, contain a reference to the application therefor, which is made a part of the contract of insurance. A copy of this application is hereto attached, which, it is prayed, may be taken as a part of this affidavit. Under the advice of counsel the defendant avers that this application is a part of said contract, and that the contract of insurance was a contract made in the State of New York, and to be interpreted by, and in accordance with, the laws of that State.

3. The policies of insurance sued upon were delivered to the said Runk upon the faith of an independent contract entered into by him, embodied in the said application, to the effect that if such policies should be granted, he, the said Runk, did, "warrant and agree * * * that I will not die by my own act, whether sane or insane, during the said period of two years"—said period of two years dating from the 6th day of November, 1891.

The said Runk did, within the period of two years, commit a breach of said contract by killing himself, as has been before stated, in the way and manner above recited. By reason of the breach of said contract, and only by reason of such breach, the policy of insurance matured, and damages occasioned by such breach are equivalent in amount to that demanded under the policies.

THE MUTUAL LIFE INSURANCE
COMPANY OF NEW YORK,
By W. J. EASTON, *Secretary.*

Sworn to and subscribed before me, a commissioner for Pennsylvania in State of New York, duly authorized to administer oaths, this ninth day of September, by the above-named deponent.

Witness my hand and official seal.

ALFRED MACKEY,
*A Commissioner for the Commonwealth
of Pennsylvania in New York.*

(Here follows application for insurance.)

22 Endorsed: No. 51. October sessions, 1892. U. S. C. C., E. dist. Penna. A. Howard Ritter, ex'r, &c., *vs.* The Mutual Life Insurance Company of New York. Affidavit of defence. Filed Sep. 11, 1893. Samuel Bell, clerk. C. P. Sherman. John G. Johnson.

Defendant's Plea.

U. S. C. C.

Defendant pleads non-assumpsit, payment with leave, etc., and set-off.

C. P. SHERMAN,
JOHN G. JOHNSON,
For Defendant.

Sept. 25, 1893.

To clerk U. S. C. C.

Endorsed: No. 51. October sess., 1892. U. S. C. C. Ritter, executor, etc., vs. Mutual Life Insurance Co. of New York. Pleas. Filed Sep. 25, 1893. Samuel Bell, clerk. — Sherman, John G. Johnson, for defendant.

And thereupon it is ordered that a jury come to try the issue joined in this case.

And afterwards, to wit, on the first day of April, A. D. 1895, come the parties aforesaid, and the jurors of the jury aforesaid being called, likewise come, to wit:

Collins Dean,
Benjamin W. Pursell,
Nathaniel Adams,
Isaac Wood,
J. Lewis Smith,
Henry Kuntz,
Miles C. Rowland,
John W. Daub,
Chas. G. Knight,
Perry J. Kistler,
Jacob Kettering.

Henry Franklin,
who are duly empaneled, returned, chosen, tried and sworn or affirmed to speak the truth, etc., in the issue joined in this case.

And afterwards, to wit, on the 5th day of April, A. D. 1895, the jurors aforesaid, upon their oaths or affirmations aforesaid, respectively do say that they find for the defendant.

And afterwards, to wit, on the 8th day of April, A. D. 1895, judgment is entered on the verdict in favor of defendant and against the plaintiff.

23 In the Circuit Court of the United States for the Eastern District of Pennsylvania, of October Term, 1892.

A. HOWARD RITTER, Executor of the Estate of Wm. M.
Runk, Deceased,
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } No. 51.

Be it remembered, that in the said term of October, A. D. 1892, came the said plaintiff into the said court, and impleaded the said defendant in a certain plea of assumpsit, etc., in which the said plaintiff declared (*pro ut narr.*) and the said defendant pleaded (*pro ut pleas.*) And thereupon issue was joined between them.

And afterwards, to wit, at a session of said court, held at the city of Philadelphia, before the Honorable William Butler, judge of the said court, on the 1st, 2d, 3d and 4th days of April, 1895, the aforesaid issue between the said parties came to be tried by a jury of the said eastern district of Pennsylvania for that purpose duly empanelled (*pro ut list of jurors*), at which day came as well the said plaintiff as the said defendant, by their respective attorneys; and the jurors of the jury aforesaid, impaneled to try the said issue, being also called, came, and were then and there in due manner chosen and sworn or affirmed to try the said issue; and upon the trial the counsel of the said plaintiff and defendant respectively offered the following evidence in behalf of the respective parties, and the court charged the jury and answered certain points submitted to him in the manner hereinafter following.

U. S. C. C.—Butler, J.

A. HOWARD RITTER, Executor of the Estate of William M. Runk, }
Dec'd,
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. }

MONDAY, April 1, 1895.

George Tucker Bispham, Esq., J. Hampton Barnes, Esq., Richard C. Dale, Esq., counsel for plaintiff.

John G. Johnson, Esq., Charles P. Sherman, Esq., counsel for defendant.

Plaintiff's Evidence.

Mr. BISPHAM: With submission to the court, gentlemen of the jury, this suit, as you have heard, is brought by A. Howard Ritter as the executor of the last will and testament of William M. Runk, deceased, against the Mutual Life Insurance Company of New York, and is brought for the purpose of recovering an amount alleged to be due by the insurance company to William M. Runk's executors on policies aggregating \$75,000.

Mr. Runk, who was a citizen of Philadelphia, a merchant engaged

in business here, died on the 5th of October, 1892, and this action is brought by his executor to recover the amount of these policies.

We shall prove to you in the plaintiff's case but a very few facts. We shall prove the policies, which in fact are admitted; we shall prove the fact of Mr. Runk's death, and, unless some evidence to the contrary be adduced, we shall ask you for a verdict for the amount of the policies.

Mr. Bispham offers in evidence on behalf of plaintiff letter-testamentary issued by the register of wills of Philadelphia county, under date of October 8, 1892, to A. Howard Ritter, plaintiff, on the estate of William M. Runk, deceased.

Mr. Bispham offers in evidence on behalf of plaintiff also the following policies issued by the company defendant to William M. Runk, of Philadelphia, all bearing date November 10, 1891, and bearing on the backs thereof the stamp, "William H. Lambert, general agent, Philadelphia," the numbers and amounts of said policies being as follows:

- No. 472,702 for \$15,000;
- No. 472,692 for \$20,000;
- No. 472,698 for \$10,000;
- No. 472,696 for \$10,000;
- No. 472,694 for \$10,000;
- No. 472,700 for \$10,000;

Mr. Bispham next offers in evidence on behalf of plaintiff certificate of George B. Luper, insurance commissioner of the State of Pennsylvania, that a license was issued April 1, 1891, to the Mutual Life Insurance Company of New York, authorizing said company to transact the business of life insurance in this State for and during the year ending March 31, 1892; also further showing that William H. Lambert of Philadelphia was duly appointed and authorized to act as agent and attorney in this State for the said Mutual Life Insurance Company of New York.

Mr. Bispham also offers the following agreement of counsel, which has been signed:

"It is agreed in this case that the execution of the policies sued upon, the payment of the premiums for the same, and that the said policies were forwarded by mail from the main office of the company defendant in New York to the agent of the company at its office in Philadelphia for delivery, be and the same are admitted."

CORNELIUS MOORE, having been duly sworn, was examined as follows:

By Mr. BISPHAM:

Q. Where do you live?

A. No. 829 Vine street, Philadelphia.

25 Q. What is your business?

A. Undertaker.

Q. Where is your place of business?

A. No. 829 Vine street, Philadelphia.

Q. Did you ever know William M. Runk?

A. Yes, sir.

Q. How long had you known him?

A. Many years.

Q. He was a member of the firm of Darlington & Runk, engaged in business on Chestnut street?

A. Yes, sir.

Q. Where did Mr. Runk live?

A. At St. David's.

Q. Where is that?

A. It is out on the Pennsylvania road.

Q. That is, a suburb of Philadelphia?

A. Yes, sir; a suburb of Philadelphia.

Q. Were you sent for to come to Mr. Runk's house early in October, 1892?

A. Yes, sir.

Q. Did you go?

A. No, sir; I sent my son out.

Q. Did you afterwards go yourself?

A. Yes, sir.

Q. When was it that you went there?

A. Perhaps two days afterwards.

Q. What did you see when you went there?

A. I saw the body of William M. Runk.

Q. He was dead?

A. Yes, sir.

Q. Did you take charge of the funeral?

A. Yes, sir.

Q. The funeral took place and the body was buried?

A. Yes, sir.

Q. Can you fix the date when you went out there?

A. About the 7th, I think, of October.

Cross-examined.

By Mr. JOHNSON:

Q. Did you examine the body?

A. No, sir.

Q. You made no examination whatever?

A. No, sir; I didn't look for anything.

26 Q. Did you not make an affidavit on the 17th of October, 1892, that William M. Runk, the deceased, died by his own hand?

(Objected to.)

Q. (Paper shown witness.) Is that your signature?

A. Yes, sir; that is my signature, but it wasn't from my knowledge.

Q. Did you not make this affidavit? Did you not swear on the 17th of October, 1892, "that deceased died by his own hand," and is not that your signature to that affidavit?

A. Yes, sir.

Q. You hardly swore to that without some knowledge of the fact, did you?

A. It was only hearsay then.

Q. Do you mean to say you did not see the body itself? You buried it?

A. Yes, sir; I saw the body and I assisted in dressing it.

Q. When you assisted in dressing the body you found the mark of a bullet wound in his head, did you not?

A. No, sir; I didn't see any bullet mark.

Q. What did you see? Was there any disfigurement of his face?

A. I didn't see any disfigurement about the body.

Q. Although you assisted in preparing his body for interment—

A. Yes, sir.

Q. You saw no mark of a bullet wound on his head?

A. No; I did not.

Q. And although you swore that he died by his own hand, you say you examined the man and you did not see that, and that when you swore that he died by his own hand you only swear by hearsay? Is that so?

A. That paper was written out for me.

Q. Who presented that affidavit to you in which you swore to that important fact which you now say you knew nothing about? Who is the man who handed you that to swear to?

A. That I don't know now. What is the date of that affidavit?

Q. The 17th of October, 1892. Can you give any explanation of how it is that you made an affidavit to a fact like that and did not know anything about the fact, and how it is that you examined this body and dressed it, and prepared it for interment and found out nothing about the mark on the forehead, the right temple?

A. I saw no mark in dressing that body. I didn't look for any mark.

By Mr. BISPHAM:

Q. Your affidavit was only from hearsay?

A. That was all. That was reported by the physician. I dressed the body and saw no mark.

By Mr. JOHNSON:

Q. Your affidavit does not say it was from hearsay. What hearsay did you rest it on?

(Objected to. Objection sustained.)

Plaintiff rests.

Mr. JOHNSON: With submission to the court, gentlemen of the jury, the case which you are about to try is a case that is exceedingly important, both in the principles involved and in its own magnitude. The question is whether or not the defendant insurance company in this case shall be made to pay to the estate of

William M. Runk this amount of policies, \$75,000, in connection with the facts which we will show you.

William M. Runk was a merchant in this city, a member of the firm of Darlington & Runk, whose place of business was on Chestnut street above Twelfth, a concern that did a large retail dry-goods business. Mr. Runk occupied in the community a position of great apparent respectability and of solvency. In point of fact he was neither solvent nor respectable. He was a man who at the time these policies were taken out was insolvent to the extent of about \$350,000, at least, and he was insolvent under these circumstances:

He had gotten into very considerable speculations in gambling in stocks, which had been carried on for years, in the course of which he had become very considerably involved, and, as is so often the case, having thus become involved, he had involved those who had entrusted their interests to him. He had taken advantage of his position in the firm of Darlington & Runk to issue notes for his own private benefit to take the funds of that firm by reason of drawing out moneys which he did not pay, and crediting himself, and otherwise, to such an extent that at the time these policies were taken out he was a defaulter to the firm of Darlington & Runk for moneys which he had practically embezzled from the firm to the extent of about \$90,000. He also had obtained from a lady, who was in some way connected with him, an amount of money, some \$130,000 odd, part of which had been obtained under a pretense that the money was to be used for the firm which he had misappropriated in this way.

He was also the treasurer of one of the charities of this city, the city mission, and, commencing a very considerable time back of the taking out of these policies, he had used the funds of that mission which came into his hands, replacing part of those funds by giving, though he had used the money for his own private purposes, the firm notes of Darlington & Runk, and also making believe that he was still in the possession of the assets of that concern by paying interest and keeping up the delusion that the assets were there. He had embezzled the funds of that charity to the extent of over \$80,000.

Therefore, when these policies were taken out, he was insolvent to the extent, as I have said, of upwards of \$350,000, and insolvent by being a defaulter, by having embezzled the funds of the charity of which he was the treasurer and of the firm to which he belonged.

He appeared to — one of those men who would sooner face death than disclosure of his dishonor and his disgrace, and having at the time these policies were taken out some \$250,000 to \$300,000 of policies already on his life, which cost him from \$10,000 to \$12,000

28 a year to carry, but which were insufficient to pay his debts and to make good his embezzlements, he seemed to have conceived the idea of taking out additional insurance to the extent of some \$200,000 more, making his total insurance from \$450,000 to \$500,000, for the purpose of raising a fund which, if the thing came to an end, as was certain, he could by reason of his death

pay these creditors and pay these embezzlements and so clear, as far as he could, his memory.

Therefore, our claim is, that as this was a deliberate attempt by a man in full possession of his faculties to defraud this insurance company by obtaining these policies to a large amount and then to commit suicide and have his estate collect for the benefit of these creditors the amount in which he was a defaulter.

We will show you that being, as I say, insolvent to that extent, having already some \$10,000 to \$12,000 per annum to pay to keep up those policies, he contracted these additional policies, including this \$75,000, to the extent of about \$200,000, requiring him, an insolvent man, to pay about \$8,000 a year additional, and of course never intended that those payments, which could not last long, would last long, but that by his deliberate suicide he would end the payment of the premiums and acquire for his estate the amount of the policies.

We will show you, in addition to these facts, which show inferentially, in a way that business men must concede, the inference of a deliberate attempt to defraud, and that he wrote letters to his executor and others in which he said he committed suicide for the purpose of paying his debts and his defaults by the insurance money.

There are the written admissions by him of the intent with which he did this thing, which we will put in evidence, and we will ask you, therefore, under that head of the defense to find that this man attempted to defraud these companies, that he attempted to take advantage of an insurance which was meant for the honest, that he meant to take advantage of it for the purpose of clearing up his name, which he had disgraced, and paying the people whom he was desirous of paying, and, under the instructions of court, we will ask you to put your stamp of disapproval upon that.

We will show you that at the time these policies were entered into William M. Runk signed this agreement.

Mr. BISPHAM: I presume the agreement is the application. I contend that that application is not evidence, if it is offered in evidence, and before that question is decided the language of the application had better not be read to the jury.

The COURT: I do not think I can interfere with the opening.

Mr. JOHNSON: Of course you do not deal with matters of law. That comes from the court. At the time of the execution of this policy William M. Runk entered into this agreement:

"I hereby warrant and agree not to reside or travel in any part of the torrid zone and not to engage in any specially hazardous occupation or employment during the two years following the date of the issue of the policy for which application is hereby made,
29 and also not to engage in any military or naval service in time of war during the continuance of the policy without first obtaining permission from the company."

I also warrant and agree that I will not die by — own act, whether sane or insane, during said period of two years."

That will, of course, go largely to you under the instructions of

law which you will have to follow. But there is the agreement on which this contract was entered into, that he would not die by his own hand, sane or insane, within two years, and within nine months after we accepted his agreement and issued the policy, he, in pursuance as we say of this carefully arranged plan, committed suicide.

A. HOWARD RITTER, called for cross-examination, having been duly sworn, was examined as follows:

By Mr. JOHNSON:

Q. You are the executor of the late William M. Runk, are you?

A. Yes, sir.

Q. You have a letter which was written to you, which you received shortly after his death, have you?

A. I haven't the letter; no, sir. I did receive a letter.

Q. How soon after his death did you first see him, and where?

A. I never saw him after his death.

Q. How soon after his death did you receive this letter?

A. The morning after his death.

Q. Who handed it to you?

A. Mr. Darlington.

Q. Joseph G. Darlington, his partner?

A. Yes, sir.

Q. Was it sealed?

A. My recollection is it was; yes, sir.

Q. Was it addressed to you?

A. Yes, sir.

Q. It was all in the handwriting of William M. Runk, was it?

A. Yes, sir.

Q. And signed by him?

A. Yes, sir.

Q. What became of that letter? Of course you as executor appreciated the very great importance of that letter, did you not?

A. I didn't think it was particularly important to any one but to me.

Q. Did you or did you not think it was important?

A. No; I didn't think it was important. However, I placed it with certain of the papers belonging to the estate, with all of Mr. Runk's papers, I may say, in one safe, in which I kept them, at the office. I never noticed that it was not there until about three weeks after his death, when, in looking over the papers, the envelope in which it had been enclosed I found was gone.

30 Q. Who had access to that safe? Was it a combination lock safe?

A. Yes, sir.

Q. Who had access to the combination?

A. My book-keeper and myself.

Q. No one but your book-keeper and yourself?

A. No, sir.

Q. Now I may take it that you inquired from your book-keeper?

A. I did, very carefully.

Q. Had he gone to the safe or examined those papers?

A. He had had no occasion, he said, to take anything out except the check book and the bank book.

Q. Then how did you satisfy yourself, or what did you satisfy yourself of, concerning the disappearance of that letter which was amongst the papers? Were any of the papers missing?

A. No, sir; nothing else that I can recollect particularly. That was certainly the most important thing that was missing.

Q. So far as you now recall, out of this safe into which you put the bulk of the papers, including this letter, nothing was missing but this letter?

A. No, sir.

Q. Before you put the letter in, then, as you did not think it of any importance, had you done anything with it? Had you shown it to anybody?

A. Not to my recollection; no, sir.

Q. You never saw it from the time you put it in until the present time?

A. I have no recollection of ever having read it but once; that was when Mr. Darlington handed it to me.

Q. Did it go out of your possession at any time after your receipt of it and before you had found it disappeared?

A. Certainly not; no, sir.

Q. How did a copy of it come to be made?

A. I don't know.

Q. There is a copy extant, is there not?

A. Mr. Bispham informed me there was.

Q. Give us the best information you can covering the fact that you put it in the safe to which you and your book-keeper alone had access, that some three weeks afterwards you missed it, that you had shown it to nobody and made no copy of it, and yet that there is a copy of it extant.

A. I can give you no information at all about it. I never knew that there was a copy in existence until two weeks ago, when Mr. Bispham told me it was in existence. I didn't make any copy.

Q. You did not cause any copy to be made?

A. No, sir.

Q. After you learned that there was this copy in existence of the paper that thus disappeared, did you make any effort to find out how that copy came into existence?

A. No, sir.

31 Q. Have you any explanation now to make of the manner in which that extraordinary result has been reached?

A. No, sir; none whatever. I can identify the copy if you have it there.

Q. This paper was handed to you by Joseph G. Darlington?

A. Yes, sir.

Q. Who delivered to you the other papers of Mr. Runk?

A. All were in envelopes.

Q. All the papers that were put in this fire-proof were in one envelope?

A. Oh no, no, sir. Mr. Farr handed them to me.

Q. Who was he?

A. He was Mr. Darlington's head book-keeper. I went down into Mr. Runk's little room and opened the safe there and took the papers that were there, the insurance policies, etc.

Q. Had he a private safe at Darlington & Runk's?

A. No, sir.

Q. It was in the firm's safe?

A. He had a compartment in the firm's safe.

Q. However, this letter was handed specially by Mr. Darlington to you. The other papers that you put in your fire-proof were gathered by you in the presence of Mr. Farr, the head book-keeper, from the safe of Darlington & Runk?

A. Yes, sir.

Q. How soon after the death did you gather those papers?

A. I think I took them away the day after Mr. Runk's death, when Mr. Joseph G. Darlington had handed me this letter; within an hour or so.

Mr. Johnson calls for the production of the copy of the letter referred to, the same being produced.

(Recess until 2 p. m.)

Cross-examination of A. HOWARD RITTER resumed.

2 P. M.

By Mr. JOHNSON:

Q. (Paper shown witness.) Do you know whose writing that is?

A. That is Mr. Farr's writing.

By the COURT:

Q. Who is Mr. Farr?

A. He is the book-keeper of Darlington & Runk.

By Mr. JOHNSON:

Q. Your place of business was entirely separate from Darlington & Runk?

A. No. 729 Walnut street; yes, sir.

Q. This letter, as I understood, was addressed to you?

A. Yes, sir.

32 Q. And handed to you by Mr. Darlington the morning after the death?

A. Yes, sir.

Q. Was it sealed?

A. I stated it as my recollection that it was sealed.

Q. And never handed back to Mr. Darlington?

A. No, sir.

Q. Nor to Mr. Farr?

A. No, sir.

Q. So that as to how Mr. Farr, the book-keeper of the firm, got a copy of the letter, you do not know?

A. No, I do not.

The copy of said letter is as follows:

A. H. Ritter, Esq.

MY DEAR FRIEND: In one of the early clauses of my will I direct all my debts and loans shall be paid.

I will try to enumerate the indebtedness in the order to be paid.

First. My account in the firm is overdrawn \$86,000, which I want replaced with first insurance amounts that you receive.

Second. I have left in the small closet in the safe a list of amounts I owe to make P. E. City mission account good \$20,000; is in notes of \$10,000 each, signed by D. R. & Co., and endorsed Mary A. Barcroft; this I owe and please pay. Then several securities have matured and I owe for them as enumerated. These are also referred to. I have some in loan with Beneficial Saving Fund Society and Pa. Co., please redeem and restore.

Third. I owe Mrs. Barcroft 96 M \$30,000, in securities for which she holds life insurance policies; please adjust these.

The 10,000 B. & P. bonds are I think at Beneficial S. F.

12,000 N. & Western " " " Phila. S. F.

5,000 P. & R. " " " "

5,000 " " \$3,000. Hilbreth, Far & Co., N. Y.
Phil. office, C. D. Barney & Co.

\$2,000. Tucker & Co., Phila.

Of course, the 126,000 or 128 will be arranged with insurance money.

Fourth. I have accounts with—

W. G. Hopper & Co., Phila.

R. E. Tucker & Co., "

Bickley, Lee & Johnson, N. Y.; Phila. office, 426 Library.

Kilbreath Far & Co. " " " C. D. Barney & Co.

Chas. Minzesheimer, " " " 3d and Chestnut.

I have marked on each account accompanying this where the securities belong that they hold.

Fifth. This should be third, and so I order it paid. I owe my mother 52 shares P. R. R. Co., and 12 shares L. V. R. R. Co.; please buy and turn over to her.

33 Sixth. I owe Jennie C. Runk 30 shares P. R. R. Co., with Hopper & Co.; please return to her.

Seventh. Miss Lena Giles, care C. S. Bucklin, Keyport, N. J., has \$6,000 notes of D. R. & Co. This I owe personally; please pay; interest was paid by me to June 1st, 18

Eighth. I owe Mr. Weightman 20 M; he holds 30 M ins.; much of it paid up.

All submitted for your guidance.

(Signed)

WM. M. RUNK.

I owe for July income and August income city mission, large black book shows also \$950, as shown by 3 checks in drawer of table in office. You will find B b'k book; I have \$2,500 loan on stock there. Look out for two notes there. See back of check book; two

25 shares of F. B. stock with F. M. Lockwood & Co. belongs to D. R. & Co.

List of Insurance.

Travellers'	5.
New England	20.
Equitable	15. 15
Bankers' & Merchants'	10.
Mutual Benefit	10.
John Hancock	20.
New York Life	20.
New York Life	100. 50
Provident	100.
Etna	20. 10
State Mutual	15. 7,500
Home N. Y.	20. 10
Penn Mutual	50.
North West	30.
Connecticut Mut.	50. 5
Life Union	10.
Berkshire	5.
Commercial Alliance	20. 20
	100.

Page 2. Penn National bank. Stock intact in safe.
 4. Girard National bank. Stock intact in safe.
 6. Commercial National bank. Stock intact in safe.
 8. Mechanics' National bank. Stock intact in safe.
 10. Manufacturers' National bank. Stock intact in safe.
 12. Camden National bank. Stock intact in safe.
 14. City 6's. Paid off; I owe \$400.
 16. City 6's. Paid off; I owe \$700.
 18. City 6's. Stock intact.
 20. Penn. State loan. Paid off; see page 10, cash book.
 22. Penn. State loan. Paid off; see page 10, cash book.
 24. Ches. & Delaware C. Co. Stock intact.
 26. Lehigh C. & N. Co. With Beneficial saving fund; I owe for this.
 34 28. Elmira & W. Intact.
 30. Hestonville. Paid off; see cash book, page 18.
 32. Hestonville. Paid off; see cash book, page 18.
 34. Fredericksburg & Gordonsville. In safe.
 36. Delaware Division Canal Co. In safe.
 38. L. C. & N. Co. In safe.
 40. Nes. Valley Co. In safe.
 42. Delaware & B. B. In safe.
 44. Phila. & Erie. In safe.
 46. L. V. R. R. Co. In safe.
 48 and 120. N. Pennsylvania R. R. In safe.
 50. Pennsylvania R. R. With Mr. Bullock, attorney.
 52. Union National bank. In safe.
 54. Scrip with Hopper. I owe for it.

56. General Passenger Railway Co. With Ben. S. F.; I owe for it.
 58. Mo. State bond. Paid; see cash book, page 48.
 60. P. R. R. Co. With Mr. Bucknell, attorney.
 62. North Carolina bonds. In safe.
 64. Philadelphia & Reading R. R. Scrip with Hopper.
 66. Pitts., C. & St. Louis. With Mr. Bucknell, attorney.
 68 and 122. L. C. & N. Co. In safe.
 70. Philadelphia & Reading R. R. In safe.
 72. Redeemed. See cash book, page 20.
 74. Redeemed. See cash book, page 20.
 76. Redeemed. See cash book, page 20.
 78. Portion sold; \$6,000 with P. & Co. I owe for that.
 80. Transferred.
 82. Stea. & Ind.; \$10,000 redeemed. I owe for them; have been paying 5 per cent. semi-annually.
 84. North Central R. R.; \$8,000 with Ben. S. F. I owe for \$2,000 redeemed.
 86. P. R. R. In box.
 88. Franklinville mortgage. I owe for interest paid by Mr. Taylor.
 90. Transferred.
 104. Redeemed. See cash book, page 70.
 114. P. R. R. In safe.
 42. 116 Del. & B. B. In safe.
 46. 118 L. V. R. Co. In safe.
 48. 120 W. Penn. R. R. In safe.
 68. 122 L. C. & N. Co. In safe.
 130. Loan account, \$10,000. I owe for it.
 108. Loan account, \$10,000. I owe for it.

I, Wm. M. Runk, treasurer, am indebted to P. E. City Mission the following amounts, which I direct my executor, A. Howard Ritter, to pay from my estate, viz:

\$400 city loan, with interest.

700 city loan, with interest.

35 4,000 L. C. & N. bond with Beneficial saving fund. R'g scrip with Hopper.

3,000 General Passenger R'y Co. with Beneficial saving fund.

6,000 P. W. & B. 4's with P. & Co.

10,000 W. & E. redeemed.

8,000 N. C. R. R. with Ben. Co.

2,000 N. C. R. R. redeemed with interest from date.

Amount Mr. Taylor has paid on Franklinville mortgage.
 20,000 notes of D. R. & Co.

(Signed)

WM. M. RUNK.

By Mr. JOHNSON:

Q. Get the books so that you can turn to the figures which I have given.

A. The books were turned over to the city mission.

Q. All those pages?

A. Yes, sir; that was all returned to the city mission.

(Black book marked "Ledger" shown witness.)

Q. Is that the book you found to which reference was made?

A. Yes, sir; that is the one.

Q. That, of course, you surrendered properly to the city mission?

A. Yes, sir.

Q. It was his ledger account with that mission?

A. Yes, sir.

Q. And these pages refer to what had become of those various securities?

A. Beginning with that fifth page, I think, is the memorandum that was found in the City Mission book. You see giving page 2 there. That was found in the City Mission book. As I understand, that was not in the envelope.

Q. Was not this part of Mr. Runk's memorandum?

A. It was not in the envelope; no, sir.

Q. Where did you find it?

A. In the City Mission book.

Q. Inside of the book was the paper which I have now read after pages 4?

A. Yes, sir.

Q. Pages 4, were the letters addressed to you?

A. Yes, sir.

Q. And from pages 5 out referring to the pages in the book that was in the book?

A. Yes, sir; I think that is where I found that.

Q. Was it made out in Mr. Runk's handwriting in the book?

A. Yes, sir; as near as I recollect, that is a copy of it.

Q. Of course, when you took out letters testamentary you looked into his estate and affairs for the purpose of verifying this memorandum?

A. I communicated with those people immediately who are named in the paper there, the brokers and the different individuals and the corporations that were named in it.

36 Q. The first statement made in this, under "I will try to enumerate the indebtedness in the order to be paid," is, "first, my account in the firm is overdrawn \$86,000, which I want to replace with first insurance amount which you receive"?

A. Yes, sir.

Q. You of course looked into his affairs to see if he had overdrawn his account in the firm, did you?

A. Yes, sir.

Q. What did you find with regard to that?

A. We sent an expert up to make a report as to his condition with the firm. We found he was overdrawn there.

Q. To the amount he stated?

A. Yes, sir.

Q. And had he overdrawn that?

A. My recollection is it was made up in two or three different ways.

Q. Give us them.

A. In the first place he had taken moneys, said to have been used for bills; that is, he had charged it up against the bill and used the money himself; he had not paid the bill.

Q. That is, he would charge against the firm cash, as though he had paid out the amounts of designated bills that he had put on the books?

A. Yes, sir.

Q. But, in point of fact, he left those bills unpaid and took the money for himself privately; that was one way?

A. Yes, sir.

Q. When did that commence?

A. I think about a year before his death. It commenced at that time, I think; I am not certain.

Q. That particular thing?

A. Yes, sir.

Q. Your best recollection is that that particular thing occurred about a year before his death?

A. Yes.

By Mr. BISPHAM:

Q. Are you speaking from your recollection?

A. Simply from the report of the expert.

By Mr. JOHNSON:

Q. Whom you employed to satisfy you from the books?

A. Yes, sir.

Q. What other method did he adopt by which he became debtor to the firm?

A. He had been allowed interest on capital, and of course if there was an impairment of capital it was not fair that he shouldn't have had the interest. Therefore there were certain matters overpaid him, and that of course had to be charged back.

37 Q. He had overdrawn his interest account then?

A. Yes, sir.

Q. What other method was there?

A. That is the only thing I recollect.

Q. How about those notes which had been given in the name of Darlington, Runk & Co. to the city missions?

A. That was a matter of adjustment with the city missions; that did not appear in Darlington, Runk & Company's account.

Q. You found no reference in Darlington, Runk & Company's books of that amount?

A. No, sir. On the contrary, Darlington, Runk & Company had paid those back. They did not owe that money at all.

Q. How do you mean they paid those back?

A. As a payment. It had been paid to the city mission, and

whatever misappropriation it was or whatever became of it he was personally responsible for.

Q. So that was a misuse of the firm's name, because the firm did not owe it?

A. The firm did owe it at one time, but it had been paid back by the firm.

Q. After the firm paid it back he kept using those notes of Darlington, Runk & Co. as if they had not been paid?

A. I have those notes here, but they were not paid.

Q. Then Darlington, Runk & Co. paid them, but they were not returned to the city mission?

A. No.

Q. Those notes of \$2,000 ran back several years?

A. I don't recollect about that.

Q. Turn to pages 108 and 130 in the black book and see when that thing commenced.

A. The loans appear to have been made in 1886, April, 1886, one of them, and the other one, I think, in April, 1887.

Q. And that loan had been repaid by the firm, though not credited to it on the note, which remained some time before his death?

A. Yes, sir.

Q. What did you find after he had been credited with his interest in the firm of Darlington, Runk & Co. with all that was coming to him out of it that he owed the firm?

A. I am afraid I will have to refer to my account for that.

Q. Perhaps the orphans' court account will show you.

(Same shown witness.)

A. This is a copy of the account I filed in the orphans' court. \$69,125.

Q. That was swollen in some way to \$86,000. What was the amount you found to be owing to the city mission?

A. About \$80,000.

38 Q. \$86,000, was it not?

A. The exact figures I guess are \$83,000. \$86,000, yes.

Q. In what way had he become indebted to the city mission? He was their treasurer, was he not?

A. Yes, sir.

Q. And had, as such, charge of their cash and securities?

A. Yes, sir.

(Objected to, unless the witness knows of his own knowledge.)

Mr. JOHNSON: I ask him only of his own knowledge, or from the knowledge of the expert, he employed to investigate.

By Mr. JOHNSON:

Q. In what way were they indebted to the city missions? Some securities had been paid off from time to time, of which he had taken to himself the money?

A. Yes, sir.

Q. He was indebted, of course, on these Darlington, Runk & Co. notes \$20,000?

A. Yes, sir.

Q. There were securities which he had pledged belonging to this city mission for his private debt, were there not?

A. Yes, sir.

Q. And that had run back some years before his death, had it not?

A. Yes, sir.

Q. What was the amount of his indebtedness to Mrs. Barcroft? About \$136,000, was it not?

A. Yes, sir; she was secured by collateral.

Q. The collateral was policies of life insurance policies, was it?

A. Yes, sir.

Q. His indebtedness to her of about \$136,000 was so covered by an assignment of life-insurance policies that that paid his debt?

A. Yes, sir; she was paid.

Q. And when you filed your account and it was adjudicated it was found, eliminating Mrs. Barcroft, who *who* was paid by money out of life-insurance policies, that he was owing about \$210,000 in addition, was it not?

A. Yes, sir; you are speaking from the account? Yes, I have no doubt that is correct.

Q. And there was a dividend paid to the creditors almost exclusively out of the life-insurance policies, was there not?

A. Yes, sir.

Q. About how much was the worth of his estate as against that \$350,000 or \$360,000, outside of the life-insurance policies?

A. That is a very hard question to answer. If he had been alive his interest in the firm of Darlington, Runk & Co. might have been settled in a very different way.

39 Q. Still, it was settled by his partner, Mr. Darlington?

A. Yes, sir; and, in addition to that, of course his real estate wouldn't have had to be sacrificed. Speaking from the bare facts as you have them in the account, of course I suppose I can only speak of that, the insurance policies undoubtedly formed the bulk of his estate.

Q. Outside of the insurance policies, how much did you derive from his own estate towards payment of this upwards — \$350,000 of debt?

A. I think almost the whole of it was life insurance that was divided. I don't think there was any considerable sum realized from outside. I had no recollection of anything.

Q. When his interest in the firm was realized it was realized by the liquidating partner, Joseph G. Darlington, was it not?

A. Yes, sir.

Q. Who is one of the large creditors now of the estate?

A. Yes, sir.

Q. And the unpaid indebtedness approximates how nearly to the unpaid life insurance?

A. We have about \$125,000 worth of life insurance unpaid, and

I believe we have about \$100,000 worth, or \$105,000 worth, of unpaid claims.

By the COURT:

Q. Unpaid debts?
A. Unpaid debts.

By Mr. JOHNSON:

Q. So the outlying unpaid life-insurance policies are about equal to the outside unpaid indebtedness?

A. Yes, sir.

Q. And outside of that amount there were some life-insurance policies assigned or put in the name of his wife?

A. There was only one policy held by Mrs. Runk, that I recollect. Two policies.

Q. You found that he had speculative accounts with how many different brokers?

A. I found an account with Kilbreath, Farr & Co., New York; Minzesheimer & Co., Lockwood & Co., Hopper & Co., Bickley, Lee & Johnson; five, I think.

Q. Those had been running for how long a time?

A. I only saw the last three months' statement. That is the only one I saw.

Q. They were speculative accounts?

A. Yes, sir; as far as I could see.

Q. There were some of those accounts that resulted in balances which you admitted against the estate at his death, were there not?

A. Yes, sir.

40 Q. Amongst the creditors who will get this life-insurance policy, if it is paid, are W. G. Hopper & Co., one of these brokers, \$7,756, Kilbreath, Farr & Co., \$6,304, and Bickley, Lee & Johnson, \$2,504?

A. Yes, that is about right.

Q. So that his unpaid insurance, which is being collected for the benefit of his estate and for which there are debts which will absorb it—the indebtedness includes those three speculative balances?

A. Yes, sir.

Q. I take for granted that you examined those accounts before you permitted them to be proved against the estate?

A. The final accounting the last two or three months whatever the estate was worth I took as correct. I didn't investigate it back for three or four years.

Q. This is what occurred at the audit: You stated that the following amounts were correct:

Joseph G. Darlington, surviving partner of the firm of Darlington, Runk & Co., a balance due as of October, 1892, \$69,125.07;

Mrs. Mary A. Barcroft, for money advanced the decedent various times, \$87,736.43;

Mrs. Fanny B. Runk, the testator's mother, \$4,580;

Lena Giles, \$6,000; Miss Jennie Runk, the testator's sister, \$2,500;

Sundry small bills as per list annexed, \$3,438.50;

W. G. Hopper & Co., \$7,756.88;

Kilbreath, Farr & Co., \$6,304.56;

Bickley, Lee & Johnson, \$2,504.19;

William Weightman, money loaned, \$20,000;

Total amount of debts, \$208,945.63.

A. Yes, that is correct.

Q. That of course did not include, as you say, Mrs. Barcroft, who was paid out of the insurance policies?

A. No, sir.

Q. Mrs. Barcroft's claim was for the amount of the shortage of Mr. Runk as treasurer of the city mission, was it?

A. Mrs. Barcroft paid the city mission in full. The estate paid all they could and she proved her whole claim against the estate; yes.

Q. This claim as it is here standing in the name of Mrs. Mary A. Barcroft is really as assignee of the city mission, covering the amount he was short?

A. Yes, sir.

Q. How long a time antecedently to the death was the last date of your seeing Mr. Runk?

A. I think I saw him on or about the second of October, I think the Monday before his death.

Q. He shot himself what date?

A. He shot himself on the 5th, I think.

Q. Did you have any long talk with him on the 2d?

A. Only about five or ten minutes.

41 Q. Of course he did not explain any of these things to you then?

A. He didn't say a word about that; no, sir.

Q. What was he discussing?

A. He simply came in the office and said he came in to say "How are you" to me, and shook hands and sat there a few minutes and got up and went away.

Q. Therefore your receipt of this letter was the first intimation you had of the condition of his affairs?

A. The first intimation I had.

Q. He had theretofore stood very high in business circles?

A. Yes, sir; I had known him for a long while. I thought him to be perfectly solvent.

Q. And had no suspicion of his shortage or of his speculating in stocks even?

A. No, sir.

Q. Did you make any inquiry as to when this letter which you received was written? Did you ascertain that it was written the afternoon before he shot himself?

A. No, sir; I don't know when it was written.

Q. Was it dated, or did it have a date on it in any way?

A. I don't recollect anything about that. It is possible it may have, but I don't remember it.

Q. I see two claims that were proved, one by his mother, Mrs. Runk, and the other by his sister, Miss Jennie Runk, one for \$4,580 and the other for \$2,500. Did you ascertain how those claims had arisen?

A. They were simply loans.

Q. I thought they were shares of stock that he had pledged?

A. No, I don't think so. Jennie Runk held notes of his aggregating that amount, and I recollect his mother had notes. She may have given stock for the notes in some shape, but that is my recollection of the claim.

Q. Was there any collateral of Mrs. Barcroft's which after his death you took up?

A. No, sir; she took up her own collateral, if there was any in existence, and charged it against the insurance she had; that is, the insurance money.

Q. Did you take up any of the city mission bonds or stock, which he had pledged for his private debt, and, if so, with what different institutions? Who took up the Pennsylvania Trust Company?

A. I did.

Q. What was that?

A. There was a note together with certain bonds of the P. W. & B. P. W. & B. 4's they were.

Q. She had his notes with the Pennsylvania Trust Company?

A. Yes, sir.

42 Q. For how much?

A. I think it was \$4,000; I don't recollect the exact amount. I think it was a new loan.

Q. Was it not \$5,100?

A. Was there that much in stock or was that the amount of the loan?

Q. That was the amount of the loan.

A. Yes.

Q. What stock was pledged to the city mission?

A. The P. W. & B. fours were with that.

Q. How much were they?

A. I think there were \$8,000 worth.

Q. So that after his death you found he had a private indebtedness in the shape of a note owing to the Pennsylvania Trust Company, of some \$5,100, and that there was pledged with that as collateral for his note some \$8,000 of the securities of the city mission?

A. Yes, sir.

Q. Those you took up and delivered to the city mission?

A. Yes, sir.

Q. Paying the money, of course, out of this insurance policy?

A. Yes, sir.

Q. Then as to the beneficial saving fund, what did you find was pledged there?

A. Refreshing my recollection, there were \$4,000 of Lehigh Navi

gation Company bonds there, and \$3,000 of Germantown Passenger railway bonds. I think that is all there were there.

Q. That is, for the Beneficial saving fund?

A. Yes, sir.

Q. And that was collateral security for his note?

A. I don't know positively that these are; \$8,000, Northern Central railroad. It is N. C. R. R., and I think we took some more. There were about \$17,000 paid the Beneficial saving fund, and I know the collateral exceeded it.

Q. Were not these loans that were taken up at the Beneficial saving fund pledged for Mr. Runk's own note; that is, the \$4,000 Lehigh Navigation loan and \$3,000 Germantown Passenger railway bonds, and \$8,000 Northern Central?

A. Yes, sir.

Q. So that there were \$15,000 of other securities of city mission which had been pledged with the beneficial saving fund for his private debt?

A. Yes.

Q. That you took up after his death?

A. We took that up, yes.

Q. And turned over his securities to the city mission?

A. Yes, sir.

43 Q. Were there any other people or corporations who held obligations of Mr. Runk's for which any securities of the city missions from other people were pledged which you took up?

A. No, sir; I don't recollect anything else at all that I took up.

Q. Those loans were renewals both with the trust company and the Beneficial saving fund?

A. Yes, sir; they were most all demand loans and paid. In some instances they were made for thirty days. I think the Beneficial saving fund notes were thirty-day notes.

Q. And they had been carried for some time?

A. Apparently renewals, yes, as far as I could say.

Q. And his financial affairs practically stood the same in October, 1891, as at the time of his death? You saw no substantial difference in his assets and liabilities?

A. I didn't make any examination as to how he stood in October, 1891. I simply examined it as it was at the time of his death.

Q. You found that the great bulk of his indebtedness at the time of his death had been owing for at least a year?

A. I don't know that I can say that, because I don't think the bulk of his indebtedness to the firm had been.

Q. Had he been speculating through the year?

A. Yes; he had been. He was in almost every stock.

Q. The amount of indebtedness to Mrs. Barcroft had been running for several years?

A. Mrs. Barcroft's indebtedness was an old one; yes.

Q. And the bulk of the city mission indebtedness had been running for years?

A. I think some of it. These two notes were redeemed, whatever time that was.

Q. And those pledged securities?

A. Yes, sir.

Re-examined.

By Mr. BISPHAM:

Q. After you qualified as executor you took up, among the first things, the examination of Mr. Runk's account with the firm of Darlington, Runk & Co., did you not?

A. Yes, sir.

Q. You had several interviews with Mr. Darlington?

A. Yes, sir.

Q. You looked at the books yourself, did you not?

A. Yes, sir.

Q. And you had the books of the firm examined by an expert employed by you in connection with the book-keeper of Darlington, Runk & Co.?

A. Yes, sir.

44 Q. Is it not a fact that the books of Darlington, Runk & Co. showed that there was standing to Mr. Runk's credit as of October, 1892, over \$100,000?

A. Yes; that is the fact. The loss was made in the adjustment of Mr. Runk's interest in the firm.

Q. At that time the overdrafts of which you speak had not been charged against Mr. Runk's account?

A. No, sir; they had not.

Q. They were subsequently charged up?

A. Yes, sir.

Q. And is it not a fact that after charging those overdrafts there still remained a balance to the credit of Mr. Runk of about \$10,000?

A. Yes, sir.

By the COURT:

Q. At what time?

A. At the time of his death. The loss was made in the liquidation of his accounts with the firm.

By Mr. BISPHAM:

Q. So you do not mean to be understood as saying that Mr. Runk had drawn down the amount standing to his credit on the books and \$86,000 besides, do you?

A. No; I do not.

Q. You mean to say that charging with \$86,000 or \$89,000, because the interest was added to those overdrafts, and charging that against the amount which stood to Mr. Runk's credit on the books of the firm, there was still left a balance in his favor of \$10,000? That is so?

A. Yes; that is so.

By the COURT:

Q. That is, at the time of his death the books showed a credit in his favor?

A. Yes, sir; it was in his favor.

Q. On the settlement of his account with the firm?

A. Yes, sir; the expert's account was rendered of his figures in the books to show that Mr. Runk was still a creditor of this firm.

Q. But on a settlement of the accounts was the balance at the time of his death in his favor or against him?

A. It is very difficult to answer that question, because there were several things. If you mean a complete settlement with Mr. Darlington of everything, then undoubtedly Mr. Runk was a debtor of the firm—that is, taking his interest in the firm and liquidating it at a discount, and also because he was credited, you must understand, on the books of the firm with his proportionate share of this stock that was on hand, the dry goods on hand there. Of course, if they all had to be realized on we were obliged to sell them at a discount, so that is what makes the difference. He was a creditor on the books.

45 By Mr. BISPHAM:

Q. After you had examined the condition of Mr. Runk's account with the firm, you, under the advice of counsel and after consultation with counsel of some of the creditors, made a settlement with Mr. Darlington as surviving partner, did you not?

A. Yes, sir.

Q. And that settlement was reduced to writing?

A. Yes, sir.

Q. (Paper shown witness.) Is that it, the agreement of February 1, 1893?

A. Yes, that is it.

Q. This was one of the stipulations in the agreement: "That Joseph G. Darlington shall, in the settlement of the accounts of the late firm of Darlington, Runk & Co., take the entire stock of merchandize as the same is on hand on the first day of February, 1893, at the price of \$469,497, being the price of said stock as marked at retail, to wit, \$670,710, less deduction of thirty per cent., to wit, \$201,213, and the said Joseph G. Darlington agrees to be responsible for the said price under such date."

A. Yes, sir.

Q. Is it not the fact therefore that in that estimate of the value of the merchandise in connection with the firm of Darlington, Runk & Co., there was a shrinkage in the values, owing to the necessity of disposing of the entire stock of merchandise on hand?

(Objected to. Objection sustained.)

Q. State what the facts were in relation to the estimated value of the merchandise in regard to the value realized by a sale of it as an entirety to Mr. Darlington. Explain why it was.

A. It became necessary for us to settle Mr. Runk's interests in the

firm of Darlington, Runk & Co. at a figure on some basis which would represent a cash settlement with Mr. Darlington. As we had a very large stock of dry goods on hand, therefore our interest in it was very large, I think it approximated about \$300,000; Mr. Darlington and I agreed after some talk that he should take the stock on hand at thirty per cent. discount. Therefore Mr. Runk, as he was a creditor on the firm books to the extent of \$10,000, crediting him at the same time with his share of the goods that were on hand at their full figures they were then credited, immediately of course became a debtor, because thirty per cent. discount was a heavy one and his interest in the business was very large; therefore he became a debtor to the firm to the extent of about \$80,000. That is the only explanation I can make of exactly what took place in the settlement between Mr. Darlington and myself of Mr. Runk's interest in the firm, and that is the way he became a debtor to the firm.

Q. In making this settlement with Mr. Darlington did you take occasion to make inquiries of other men in the business?

A. The settlement was made only after a very considerable correspondence with gentlemen who were thoroughly versed in the dry goods business. I wrote to Mr. Strawbridge about it, and I 46 went to see Mr. Brown, of Wood, Brown & Co. In addition to that, I consulted with you, Mr. Bispham, with regard to the advisability of making the settlement, and it was only after I had seen them that the settlement was made. We believed it to be the best that could be done for the estate.

Q. Coming to the account of the city mission, you have that book before you, have you not?

A. Yes, sir.

Q. As I understand you, the city mission had some time prior to Mr. Runk's death been accommodated by the firm of Darlington, Runk & Co.?

A. Yes, sir.

Q. Is there anything on the books of the city mission to show at what time this misappropriation by Mr. Runk took place?

A. No, there is nothing on the books that I know of to show it.

Q. I mean anything on the memorandum you found among Mr. Runk's papers which was put in the leaves of that book?

A. No, there is nothing there.

Q. Nor is there anything on the pages of the book to which the memorandum referred which showed them when this alleged misappropriation took place?

A. No, sir; nothing that I know of.

Q. The indebtedness of Mr. Runk to the city mission appeared as of what date?

A. His indebtedness to the city mission was only ascertained after the expert had been over those books, and it was all made up to a certain time. Whatever the expert found to be missing he simply charged to Mr. Runk. There was no other way for us to arrive at a settlement.

Q. Did that investigation of the expert fix the time when that indebtedness arose?

A. No, sir, I think not. I haven't a copy of his report, but I don't think it did.

Q. Are you able to say from your recollection and from your examination of the entries in that book to which reference is made in the memorandum whether that indebtedness arose more than six months prior to Mr. Runk's death?

A. No, sir, I have no means of arriving at it from this book.

Q. Speaking about Darlington, Runk & Co., owing the city mission, it was the other way? The city mission loaned money to Darlington, Runk & Co.?

A. No, my recollection is that Mr. Perot told me it was an accommodation to the city mission. He wanted to get it invested and were very anxious to take it out, and Mr. Runk said they could use it. That was the reason I said "yes" when you asked me.

Q. Then when Darlington, Runk & Co. wanted to pay the city mission off the money passed through Mr. Runk's hands?

A. Yes, sir.

47 By Mr. JOHNSON :

Q. And stopped there?

A. Yes, sir.

By Mr. BISPHAM :

Q. When it stopped there you do not know?

A. No, sir.

Q. You have been referred to the account which you filed in the orphans' court. In that account you included the amount of insurance moneys you had collected?

A. Yes, sir.

Q. You have also been asked in regard to a policy of insurance which you found among the papers to the benefit of Mrs. Runk?

A. Yes, sir.

Q. Do you recall what was the amount of that policy?

A. \$5,000.

Q. And there was another one?

A. One of \$20,000 and one of \$5,000.

Q. There were two?

A. Yes, there were two, one of \$20,000 and one of \$5,000. The \$5,000 one has been paid, and the \$20,000 one had not.

Q. And the aggregate amount of the policies of insurance for the benefit of the estate was how much?

A. Unassigned, do you mean?

Q. Yes.

A. I should say there were about \$150,000 or \$200,000.

Q. That is, not assigned as collateral?

A. Yes.

By the COURT:

Q. And that have been paid?

A. We have already collected about \$150,000.

Q. Did you mean to say that was the aggregate of all the policies held by him?

A. No, sir; the aggregate amount of the policies held by the estate was about \$225,000, payable to the estate.

Q. And then \$25,000 that the wife had?

A. Yes, sir.

Q. What else?

A. The balance was held by other people as collateral. I think there was about \$100,000.

Q. Besides?

A. Yes, sir.

Q. That would make how much?

A. About \$325,000 all together.

48 Q. Including what the wife had?

A. Including what the wife had, I think that is right.

We only collected \$150,000, and we have \$125,000 in suit.

By Mr. BISPHAM:

Q. Does the \$150,000 that you speak of as collateral include the policies which are outstanding as collateral?

A. No, sir; I didn't include those in that. They were not paid to the estate.

Q. Then in the \$150,000 you do not include any amount which has been collected by the holders of the policies which have been assigned as collateral?

A. No, sir; I do not.

Q. You do not include the policies on Mr. Runk's life by his widow?

A. No, sir.

Q. Referring to the account, the amount which you said was paid by the insurance company foots up \$148,500, which is in ten different companies, is it not?

A. Yes, sir.

Recross-examined.

By Mr. JOHNSON:

Q. Run your eye down this list of policies which I show you, footing up \$510,000, and see whether all those were not on Mr. Runk's life at the time of his death, though of course some of them were pledged with people?

A. Yes, I suppose that is right.

Q. So that he was carrying and joint creditors were interested at the time of his death in \$510,000 of life-insurance policies?

A. Including the widow's policy.

Q. That was \$20,000?

A. Yes, sir; \$25,000 was hers.

By the COURT:

Q. How do you account for the difference; you made it a while ago \$325,000?

A. I, as executor, was entitled to collect a certain amount of money from these companies and, as executor, I collected from them about \$150,000 up to the time of the filing of this account, but that is the only amount in which I am interested.

Q. I understood you to say that the policies which you received as executor of the will and the policies in the hands of others as collateral, together with the policies held by his wife, amounted to about \$325,000.

A. No, sir. I am sorry I gave that impression.

Q. Then it was \$510,000?

A. Yes; about \$500,000.

49 By Mr. JOHNSON:

Q. In order to separate this, which of this aggregate of \$490,000 was held as collateral by other people? I will call off the amounts of the policies that you collected, and ask you to name the policies which you are trying to collect, and the balance necessarily will be right. You collected from the New York Life \$50,000, from the Provident Life \$10,000, the Equitable Life \$15,000, the Northwestern Mutual \$5,000, the State Mutual Life \$10,000, the John Hancock \$20,000, the Berkshire \$20,000, the Aetna \$7,500, and from the Commercial Alliance \$1,000.

A. Yes, sir.

Q. That foots up \$128,500, which you collected, does it not?

A. Yes, sir, \$148,000.

Q. What was the amount in the Aetna?

A. That was \$15,000.

Q. Then you compromised that for \$7,500?

A. Yes, sir.

Q. The Commercial Alliance was what?

A. That was \$10,000.

Q. That you settled for \$1,000?

A. Yes, sir.

Q. So that made \$148,000 of policies. What are you now suing on?

A. \$125,000, \$75,000 in the Mutual and \$15,000 in the Home.

Q. Then that is \$125,000, and the \$20,000 of the wife?

A. Yes, sir.

Q. How much did you collect?

A. \$148,000 I collected.

Q. That makes \$293,000.

A. Yes, sir.

Q. Then the difference of the \$510,000 makes the pledged policies?

A. Yes, that is what it must have been.

Q. And that includes amongst others \$135,000 of Mrs. Barcroft's?

A. Yes, sir. They were either pledged policies or policies that were not payable to me at all.

Q. Mr. Darlington is the gentleman who sits there (indicating)?

A. Yes, sir.

Q. He is represented here by his counsel, Mr. Dale, who specially represents him in this litigation?

A. Yes, sir.

Q. Your counsel, the counsel for the estate, are Mr. Bispham and Mr. Barnes?

A. Mr. Dale is also counsel of the estate.

Q. I thought he was Mr. Darlington's special counsel.

A. He — also retained for the estate.

50 Q. After representing Mr. Darlington?

A. Yes, sir.

Q. And Mr. Dale represented Mr. Darlington in all this settlement of this thing?

A. Yes, sir.

Q. Mr. Darlington today claims out of this insurance money over \$69,000, does he not?

A. His claim against the estate is that amount.

Q. And yet you say that after charging against his account all these overdrawals of \$86,000 the books showed that instead of being a debtor for \$69,000 he was a creditor for \$14,000.

A. A creditor for about \$1 00.

Q. So that by the method which that concern has been liquidated a credit of \$10,000 has been turned into a debt that is now sought to be recovered out of these insurances of \$69,000? Is that so?

A. The credit has been turned into a debt, yes.

Q. There is no intimation by you that the interest of Mr. Runk was really worth that at which you liquidated it and left him a balance, is there?

A. I think if Mr. Runk had been alive maybe to make the settlement himself he certainly ought to have come out a creditor, yes.

Q. Mr. Darlington continued to carry on the business, did he not?

A. Yes, sir.

Q. And the original agreement provides that the settlement should be so made that the surviving man should get no advantage of the dead man's estate, does it not?

A. Yes, sir.

(Mr. Johnson offers in evidence said agreement.)

Q. I will offer this agreement in evidence and read it, and then ask you about it.

(Mr. Johnson reads the same as follows:)

"Memorandum of agreement made this 1st day of February, 1893, between Joseph G. Darlington of the one part, and A. Howard Ritter, executor under the will of William M. Runk, deceased, of the other part;

Whereas, Joseph G. Darlington and William M. Runk, late copartners, doing business under the firm name of Darlington, Runk & Co., under articles of agreement bearing date July 31, 1886;

And whereas, in the eleventh article of said articles of copartnership it is provided as follows:

In the event of the dissolution of the aforesaid copartnership by the death of either of the partners, the interest of the deceased part-

ner in the firm shall terminate at the first stock-taking succeeding death, and the surviving partner shall wind up and settle the business as soon as possible, care being taken not to disarrange the same, and to be done in such a manner as will be most to 51 the advantage of both partners, the estate of the deceased partner not to suffer loss for the benefit of the surviving partner.

And it is further agreed that all collections arising from the book debts of the firm of Darlington, Runk & Co. shall be accounted for by the surviving partner to the legal representative of the deceased partner quarterly."

That ends the quotation from the article.

"And whereas, William M. Runk died on the 5th day of October, 1892, and A. Howard Ritter is the executor under his will, acting under letters testamentary granted by the register of wills of Philadelphia county;

And whereas, the next stock-taking subsequent to the death of the said William M. Runk was on the 1st day of February, 1893, and by the terms of the articles of copartnership hereinbefore recited the interest of the said William M. Runk in the firm terminated at that date;

And whereas, the said Joseph G. Darlington proposes to continue the business of importing, jobbing and retail silks and general dry goods under the name of Joseph G. Darlington & Co., and it is necessary in order to facilitate the liquidation of the business of the late firm of Darlington, Runk & Co., that the value of the stock of goods on hand on February 1, 1893, should be determined and fixed;

And whereas, it has been agreed between the parties that the most equitable way of determining the present value of said stock of goods and fixtures for the purpose of liquidation will be to deduct from the retail price of said stock of goods as marked a deduction of thirty per cent., and from the fixture account, as the same appears on the ledgers of the late firm, a deduction of thirty-three and one-half per cent.;

Now, for the purpose of evidencing the premises, it is agreed between the parties hereto as follows:

1. That Joseph G. Darlington shall on the settlement of the account of the late firm of Darlington, Runk & Co. take the entire stock of merchandise as the same was on hand on the 1st day of February, 1893, at the price of \$469,497.55 being the price of said stock as marked at retail, to wit, \$670,710, less deduction of thirty per cent., to wit, \$201,213.23; and the said Joseph G. Darlington agrees to be responsible for said price as of such date.

2. That the said Joseph G. Darlington will in like manner take the fixtures of the late firm of Darlington, Runk & Co. in such liquidation at the price of \$34,578, being the amount of the fixture account as it appears on the ledger of the firm, to wit, \$51,868, less one-third.

3. The said Joseph G. Darlington agrees that he will at all times indemnify and protect the estate of William M. Runk from all liability for all obligations of the firm of Darlington, Runk & Co.

4. Joseph G. Darlington shall continue to collect the outstanding accounts due or to become due to the late firm of Darlington, Runk & Co., for the benefit of the firm, and settlement shall be made of the account of the firm as between the said Joseph G. Darlington and the estate of the said William M. Runk, on the basis of the amounts actually realized from the collection of the accounts payable and the sale of any goods or fixtures on the terms hereinabove provided, in accordance with the articles of co-partnership.

Witness the signatures and seals of the parties hereto this first day of February, 1893.

(Signed)

JOSEPH G. DARLINGTON.

A. HOWARD RITTER,

Executor of William M. Runk.

Q. Under that agreement the liquidation of his interest showed that he was short about \$70,000.

A. The liquidation of his estate, yes.

Q. Which you admitted in the audit before the court to the adjudicating judge to be correct?

A. Yes, sir.

By the COURT:

Q. That resulted from the depreciation or the deduction which you allowed on these goods in the settlement with Mr. Darlington? In other words, the outstanding indebtedness for those goods, in view of the depreciation you conceded left Mr. Runk indebted for that amount.

A. Yes, sir.

Q. That is the way it came about?

A. That is correct exactly, yes, sir.

By Mr. JOHNSON:

Q. And Mr. Runk was right in his letter to you stating that the nominal capital of \$10,000 had been really depleted by surreptitious withdrawals by him to the tune of \$86,000?

A. His figures were right.

By the COURT:

Q. That is, his figures in the letter to you?

A. They were about right; yes, sir.

By Mr. JOHNSON:

Q. On the face of the books he appeared to be a creditor for \$100,000?

A. Yes, sir.

Q. But by reason of not charging up amounts and in the way you have stated he was really but \$14,000 a creditor?

A. Yes, sir.

Q. And that \$14,000 depended on the assets realizing what they stood at on the books?

A. That is it exactly.

Q. And you settled with Mr. Darlington in a way by a deduction of thirty per cent. that brought him in debt the \$69,000 which Mr. Darlington is now claiming out of this insurance?

A. That is it; yes, sir.

53 By the COURT:

Q. Mr. Runk's statement corresponded with the state of the account; that is, his statement in his letter and the written statement made to you corresponded with the state of the account of the firm?

A. Very closely; yes, sir.

Q. And the charge that subsequently took place which turned him into a debtor in a sum about equal to what he supposed himself to be indebted to the firm resulted from the deduction which you allowed in the settlement with Mr. Darlington?

A. That is right, exactly.

JOSEPH G. DARLINGTON, called for cross-examination, having been duly affirmed, was examined as follows:

By Mr. JOHNSON:

Q. There was a letter addressed to you by William M. Runk, written shortly before his death?

A. There was.

(At the request of Mr. Johnson the witness produces the letter referred to.)

Q. This is all in his handwriting?

A. It is.

(The letter referred to is read by Mr. Johnson, being as follows:)

"LLANDEILO.

MY DEAR JOSEPH: I have grossly deceived you and can only pay my debts by my life. The Girard bank is overdrawn \$20,000, F. & M. \$20,000, N. A. \$18,000, Tradesmen's \$16,000, Fourth Street \$6,000; \$86,000.

To make these accounts good you will find checks drawn and not sent in Arthur's hands in compartment in the safe, my top corner closet, in an envelope. These checks with balance in each bank have kept showing fair to good. Howard Ritter is my executor, and I have given him instructions to make these \$86,000 good from my first insurance payments.

The money on loans he is to pay also, and you may in Farr's small book charge to me. This is a sad ending of a promising life, but I deserve all the punishment I may get, only I feel my debts must be paid. This sacrifice will do it, and only this. I was faithful until two years ago. Forgive me. Don't publish this."

Q. What was the day of the week that he died?

A. Wednesday.

Q. What is the date of the letter?

A. Tuesday.

By the COURT:

Q. When did you get it?

A. I am not clear when I received it.

54 Q. It came through the mail?

A. No; it didn't come by the mail, but I have been told that I received it the morning after Mr. Runk's death, and the party who told me it I have no right to doubt.

By Mr. JOHNSON:

Q. Do you know how it came into your possession?

A. No; I don't know. I am not positive on that.

Q. Is your mind a blank as to how this letter got into your possession? There must have been a period of time when you opened this letter which brings back the getting of it into your hands?

A. I am not at all clear when I received that letter, whether I received it the night of Mr. Runk's death or the morning following his death, but from all I can learn I believe I received it the following morning.

Q. Where was it when you first saw it?

A. That I do not know. It was handed to me by some one, but I am not sure who handed it to me.

Q. It was handed to you by somebody either the night of his death or the following morning?

A. Yes, sir.

Q. You were at his house the night of his death?

A. I was.

Q. Did you get it when you were out there?

A. That I am not clear about.

Q. Is this statement here that there were overdrawn accounts in the five different banks, each in a named amount, aggregating \$86,000, a correct statement?

A. That is not a correct statement. No bank was overdrawn.

Q. In what respect is it incorrect?

A. That none of the banks were overdrawn.

Q. What does this mean: "To make these accounts good, you will find checks drawn and not sent in Arthur's hands"?

A. That means that Mr. Runk drew money to pay A, B, C, & D on certain debts, and so far as Darlington, Runk & Co. were concerned those accounts were properly mailed and properly closed—A, B, C, & D's accounts.

Q. What do you mean by "so far as Darlington, Runk & Co. were concerned"?

A. I mean so far as Mr. Runk's connections or transactions with the firm the books of Darlington, Runk & Co. don't show anything. They are absolutely correct. This matter of \$86,000 does not appear on the books of Darlington, Runk & Co.

Q. How was there an overdrawing of his account?

A. Just as I have stated. He would draw accounts for these dif-

ferent parties, which accounts were drawn by Mr. Farr, who is now dead. Mr. Farr would draw those checks and close them so far as his books were concerned, and charge them to the various individual firms.

55 By the COURT:

Q. What became of the money?

A. Mr. Runk then would draw an equal amount of money in some form or shape to cover those checks. He drew certain checks for different amounts, and then he would draw one or two checks to cover that amount, and of course that would keep the books straight.

By Mr. JOHNSON:

Q. He did draw his checks, did he not?

A. He drew his checks.

Q. Suppose the checks drawn to those parties had been paid, would not the account have been overdrawn \$86,000?

A. If it had not been paid.

Q. If they had been paid would there not have been an overdraft of \$86,000?

A. If his account was good it wouldn't have been an overdraft; it would have been charged against it.

Q. Had those checks which were drawn to the firm's creditors on the firm's bank been actually presented and paid, would not the firm's bank account have been overdrawn \$86,000?

A. They wouldn't have been paid if they had been overdrawn.

Q. Do you not know with your intelligence what the question is? If you do not, I will ask that the question be read to you.

(Question read.)

A. I cannot give any other answer.

Q. How much was the aggregate of these checks?

A. About \$86,000.

Q. As a business man, do you not think that by studying the question for some time you can tell me whether the result would not have been that if these \$86,000 of checks had been drawn out of the bank account it would have been overdrawn \$86,000?

A. No; I want to answer you, but I don't see how I can, because the banks wouldn't have paid them.

Q. When did the firm of Darlington, Runk & Co. pay its loan of \$20,000 to city mission?

A. I should say within a very few months after we received the money.

Q. You received the money when?

A. That I am not clear about; about 1885 or 1886.

Q. So far back as 1885 or 1886 \$20,000 of notes of Darlington, Runk & Co. in favor of the city mission had been paid?

A. Yes, sir.

Q. And you were unaware until the death of Mr. Runk that the notes had never been taken up, were you not?

A. Yes, sir.

56 By the COURT:

Q. That money he had drawn from the firm and applied to his own use, had he?

A. So far as the firm knew we only had that money simply on deposit with us at the request of the city mission, and the money was paid right back within a few months, and I never knew anything more about it until after Mr. Runk's death. It don't appear on our books in any form.

By Mr. JOHNSON:

Q. There was a letter written to Mr. Ritter by Mr. Runk which has been read here in your presence. I understood Mr. Ritter to say that he got that letter from you?

A. So he says, and I suppose he did.

Q. Did you open that letter addressed to him and cause a copy to be made?

A. No; I have no recollection about it. I don't know anything about it.

Q. You can give us no explanation of the anomaly of that copy being forthcoming, then?

A. No; I know nothing about it.

Re-examined.

By Mr. BISPHAM:

Q. Where did you get this letter which was subsequently handed by you to Mr. Ritter?

A. My impression is the package was given to me on the evening of Mr. Runk's death.

Q. Where?

A. At Mr. Runk's house?

Q. Do you remember by whom?

A. I think by Mrs. Runk. Whether that package was sealed or unsealed I am unable to say. My impression is it was unsealed.

Q. Do you recollect what you did with it?

A. I took it into the office next morning, and I think I handed it to Mr. Farr, but that is quite indistinct.

Q. The envelope may have been unsealed?

A. My impression is it was unsealed.

By the COURT:

Q. That it was unsealed when you handed it to him?

A. Yes, sir.

By Mr. BISPHAM:

Q. (Paper shown witness.) Look at this copy identified by Mr. Ritter and state whether you recognize the handwriting, and, if so, whose it is.

A. It is in the handwriting of Mr. Farr.

57 By the COURT:

Q. It has been stated by Mr. Ritter that Mr. Runk's statement that he had overdrawn his account \$80,000 odd was correct according to the state of the account at the time of his death, but that on a settlement of the accounts between himself and the firm at the time of his death it turned out that the firm was indebted to him in \$10,000?

A. That is correct.

Q. I do not understand how, if the firm owed him \$10,000, according to the account, he could have overdrawn his account \$80,000 odd?

A. Let me explain that. Mr. Runk, in this letter that was read, or, I think in my letter, states that those amounts will be found represented by checks, and that account was never allowed to go into our books. The settlement of that indebtedness to these various parties never again went into our book. It was settled entirely distinct.

By Mr. JOHNSON:

Q. How much did the articles of copartnership require Mr. Runk to have to his credit?

A. Never less than \$100,000.

By Mr. BISPHAM:

Q. (Indicating.) This is the balance under date of August 1, 1892, showing a credit to Mr. Runk's personal account of \$107,868.16?

A. Yes, that is correct; \$107,868.16 was Mr. Runk's credit on the 1st of August, 1892.

By the COURT:

Q. So the truth is then, as I understand it, according to the face of the book, that he had overdrawn his account \$80,000 odd, but according to a settlement made at the time of his death the firm was indebted to him in \$10,000?

A. No.

By Mr. JOHNSON:

Q. How do you remember that the letter to Mr. Ritter was unsealed, when you do not remember who handed you your letter?

A. I cannot explain that.

Mr. Johnson reads in evidence the deposition of Mrs. Mary A. Barcroft, on behalf of plaintiff, taken by agreement on mutual understanding as to time.

(Adjourned until Tuesday, April 2, 1895, at 10 o'clock a. m.)

58

U. S. C. C.—Butler, J.

A. HOWARD RITTER, Executor of the Estate of William M. Runk,
Deceased,

vs.

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK.

TUESDAY, April 2, 1895.

Mr. Bispham, Mr. Dale, Mr. Barnes, Mr. Dickson, for plaintiff;
Mr. Johnson and Mr. Sherman, for defendant.

WILLIAM H. NICE, having been duly sworn, was examined as follows:

By Mr. JOHNSON:

Q. Where are you employed?

A. With Joseph G. Darlington & Co.

Q. Were you at any time in the employ of Darlington & Runk?

A. Yes, sir.

Q. For how long?

A. About seventeen years.

Q. Do you remember the late William M. Runk?

A. Yes, sir.

Q. Do you remember the day of his death?

A. Yes, sir.

Q. Where did he live at that time?

A. St. David's, Delaware county.

Q. Did you go there about the time of his death?

A. After his death.

Q. How long after?

A. Probably half an hour, I presume, to an hour.

Q. What took you out there?

A. I was requested to come out in the afternoon by Mr. Runk.

Q. Before he left?

A. Yes, sir.

Q. What did he tell you to do?

A. He just asked me if I had anything to do that evening, and I told him "no." He asked me to come out to his place, and I went out.

Q. Did you tell him what train you would come out on?

A. No, sir; he told me to take the 7.15 train.

Q. Was that a usual thing for you to do, to go out in that way?

A. It was usual for me to go out there.

Q. When you got out there was he alive or dead?

A. He was apparently dead.

Q. Where was he?

A. Lying in his parlor.

59 Q. Did you know of any notes left by him addressed to anybody delivered after his death?

A. Yes, sir; one to Mr. Darlington and one to Mr. Thomas.

Q. Was there one addressed to you?

A. Yes, sir.

Q. Why did you mention that?

A. I don't know why I didn't.

Q. Have you the letter that he addressed to you?

A. Yes, sir.

(At the request of Mr. Johnson the witness produces the letter referred to.)

Q. Did you see the body?

A. Yes, sir.

Q. What did you notice about it?

A. I noticed that he had a wound of some sort.

Q. Where was it?

A. In his right temple.

Q. What day was that?

A. That was on Wednesday, October 5, I believe, as near as I can recollect.

Q. (Indicating.) This is the letter, is it?

A. Yes, sir.

The letter referred to is as follows:

LLONDEILO.

WILLIAM: Do all you can for Mrs. Runk, and see that I have a quiet funeral. I am driven to this, but I have tried to be a friend to you. Don't talk to any one.

Yours truly,

WILLIAM M. RUNK.

Tuesday, October 6, 1892.

Cross-examined.

By Mr. BISPHAM:

Q. You saw Mr. Runk that morning, did you?

A. Yes, sir.

Q. Where?

A. At the store.

Q. Did you have any conversation with him?

A. I only received some few orders from him, that is all.

Q. Was there anybody present when you had the talk with him?

A. No, sir.

Q. Whereabouts in the store was it?

A. In his office on the second story.

Q. The conversation was a very short one, was it?

A. Yes, sir; just giving me necessary morning orders.

60 Q. Do you recollect what time of the day it was when you saw him in the morning?

A. It was about the usual time, about between eight or nine o'clock, or probably a little after nine.

Q. It was quite early in the morning?

A. Yes, sir; when he first came in the store.

Q. He used to come to the store early?

A. About that hour; yes.

Q. Do you happen to know whether Mr. Darlington had come to the store at that time?

A. No, sir; I didn't see Mr. Darlington. If he was there I didn't know it.

Q. His habit of coming to the store was a little later, was it not?

A. A little later; yes.

Q. So Mr. Runk used to get there first?

A. Yes, sir.

Q. And you had a talk with Mr. Runk shortly after he came to the store?

A. I always went to Mr. Runk when he first came to the store to get whatever orders he wanted me to execute during the day.

Q. That is what you did on this morning?

A. Yes, sir.

Q. When you went out to St. David's you went out what time in the afternoon?

A. I went out on the 7.15 train.

Q. Where did you find the letter you got, of which you have spoken?

A. It was handed to me out there by Marshal Runk.

Q. Marshal Runk was Mr. Runk's son?

A. Yes, sir.

Q. Were any other letters handed you by Marshal Runk?

A. Not that evening.

Q. Were any letters handed to you at any subsequent time by Marshal Runk?

A. The next morning.

Q. What letters did he give you then?

A. He gave me two letters.

Q. Addressed to whom?

A. One to Joseph G. Darlington and one to George C. Thomas.

Q. Was the envelope containing the letter to Mr. Darlington open or not?

A. No, sir; they were closed.

Q. What did you do with the letter to Mr. Darlington?

A. He gave it to me just before the train was ready to start, and he told me to deliver one to Mr. Darlington and the other to George C. Thomas.

61 Q. What sort of an envelope was it that the letter addressed to Mr. Darlington was enclosed in? Was it a long envelope or a short envelope?

A. It was a short envelope.

Q. You delivered that to Mr. Darlington?

A. I did; yes, sir.

Q. At the store, I suppose?

A. Yes, sir.

Q. And you took the other letter to Mr. Thomas?

A. No, sir.

Q. What did you do with the other letter?

A. I gave it to Mr. Darlington.

(Mr. Johnson offers in evidence on behalf of plaintiff the orphans' court record of the settlement of the account of A. Howard Ritter, executor.)

GEORGE T. FALLON, having been duly sworn, was examined as follows:

By Mr. JOHNSON:

Q. You were the coroner who held the inquest on the late William M. Runk, were you not?

A. I was.

Q. Of what county?

A. Delaware county.

Q. About what hour did you first see the body, and state whether you examined into the cause of his death and what you found it to be.

A. I first saw the body at eight o'clock in the evening of October 6.

Q. Was it Tuesday or Wednesday?

A. Thursday, October 6, at eight o'clock p. m. I examined the body in the presence of the jury, and found a bullet wound over the right temple on the right.

Q. Which temple was it?

A. The right temple.

Q. Did you examine to see whether that had been done by somebody else or by Mr. Runk?

A. There were no marks of powder whatsoever. There was only one wound.

Q. Was there any evidence of any violence from anybody else?

A. Seemingly not.

Q. The inquest was held at that time?

A. Yes, sir.

Q. And the verdict of how he died was what?

A. Temporary aberration of the mind.

Q. The inquest was that he had shot himself?

A. Yes, sir.

62 By the COURT:

Q. That is the way they expressed it?

A. That is the way they expressed it.

By Mr. JOHNSON:

Q. Had you known him before?

A. Not intimately. Just simply a passing acquaintance, that is all.

Q. Do you remember what witnesses were examined by your inquest?

A. William H. Nice, Patrick McCuen, John Moore, Arthur Runk, Dr. Islip and Joseph G. Darlington. I think that is all.

Cross-examined.

By Mr. BISPHAM:

Q. I thought you said the finding of the jury was that Mr. Runk had killed himself while under temporary aberration of the mind?

A. That is my recollection. I have it here.

Q. Turn to your record of the finding and read the exact language.

(The witness reads same.)

Q. Does not the whole sentence read this way, after reciting the holding of the inquest: "Do on their solemn oaths and affirmations respectively say that it appears from the evidence before us that his death was caused by a gunshot wound inflicted by himself while suffering under a temporary aberration of the mind"?

A. "That the deceased came to his death from a gunshot wound." That is right.

Q. Inflicted by himself while suffering under a temporary aberration of the mind?

A. That is correct.

Re-examined.

By Mr. JOHNSON:

Q. That was found on the testimony produced before them?

A. Yes, sir.

(The witness produces on the call of Mr. Johnson the testimony referred to.)

Q. You have given copies of this, have you not?

A. Yes, sir.

(Mr. Johnson offers in evidence on behalf of plaintiff the testimony taken before the coroner's jury on the occasion in question.)

Objected to. Objection sustained.

RALPH F. CULLANAN, having been duly sworn, in answer to Mr. Bispham, Mr. Johnson states:

Mr. JOHNSON: I propose to prove the date anterior to the issuance of this policy of the appropriation by Mr. Runk of the securities of the city mission in his hands as treasurer.

63 (Objected to on the ground that the mere proof of indebtedness does not indicate any intention whatever to take one's own life.)

The COURT: This is one of the circumstances that must be heard. Its value, or whether it really has any value, could not be considered at this time, but the court will have to hear it and reserve for after consideration what weight it should have, or whether it should have any. We may be asked to rule it out, and, if so, we will consider it.

(Exception by plaintiff.)

By Mr. JOHNSON :

Q. You are president of the Beneficial Saving Fund Society at Twelfth and Chestnut streets?

A. Yes, sir.

Q. After the death of William M. Runk were there any securities taken up by his executor?

A. Yes, sir.

Q. What were those securities, and when were they first pledged?

A. (Referring to paper.) There were \$8,000 of Northern Central consolidated general mortgage sixes received by the executor on the 19th of November, 1892.

There were \$10,000 of Baltimore & Ohio Railroad six percents received on November 11, 1892, for which we had the receipt of Mr. Tener, who signed as for Mrs. Barcroft, and the executor of William M. Runk's estate.

Then there were \$8,000 of Germantown Passenger Railway five per cent. bonds, and \$4,000 of Lehigh Coal & Navigation Company gold six per cent. bonds that were received on the 19th of November, 1892, by Mr. Ritter as executor.

Q. On the 19th of November, 1892, there were \$8,000 of Northern Central bonds, \$8,000 of Germantown Passenger Railway bonds and \$4,000 of Lehigh Navigation bonds received by Mr. Ritter?

A. Yes, sir.

Q. When did those bonds come into the possession of your company, originally, and as a pledge for what? Take the \$4,000 of Lehigh Navigation bonds.

A. They came into our possession on the 29th of April, 1891, the \$4,000 Lehigh Navigation and the \$3,000 Germantown Passenger Railway fives, for a loan of \$6,800.

Q. Whose loan was that?

A. It was a loan to William M. Runk.

Q. How about the \$8,000 of Northern Central bonds?

A. The \$8,000 of Northern Central came into our possession on April 14, 1886. There were originally \$9,000 of those, and it was for a loan of \$9,000. \$1,000 of them matured on January 10, 1891, and were collected by us, and the amount credited on account of the loan at Mr. Runk's request.

64 Q. Whose note was that always?

A. William M. Runk's?

Q. They were there as early as 1886?

A. Yes, sir.

Cross-examined.

By Mr. BISPHAM :

Q. Do I understand that these were coupon bonds?

A. Yes, sir; all coupon bonds.

Q. There was no evidence of ownership?

A. There was no evidence of ownership, as I remember now, I don't recall any.

Q. And the note was Mr. Runk's note?

A. Yes, sir.

Mr. Johnson reads in evidence the following letter:

RUNK'S ESTATE }
vs. }
INS. CO. }

PENNSYLVANIA R. R. CO.,
TREASURER'S DEPARTMENT, March 29, 1895.

John Scott, Jr.

DEAR SIR: Replying to your inquiries, I would say that all the issues of \$134,000 of Steubenville & Indiana Railroad Company seven per cent. bonds falling due January 1, 1890, have been redeemed, and all but \$1,000 prior to March 1, 1890, the remaining \$1,000 being paid in October, 1891.

These bonds were commonly known as Steubenville & Indiana bonds, but appear in our books as bonds of the Pittsburg, Cincinnati & St. Louis Railway Company, Steubenville & Indiana Railway Company, Columbus & Newark division.

These bonds were largely collected through banks and trust companies and it is thus impossible to say from what individuals they were redeemed. Neither our books nor our checks show any payment on this account to William M. Runk, either individually or as treasurer of the Protestant Episcopal city mission.

This is all the information our books can give, and I trust this will be accepted as the full extent of the testimony we can give you.

Yours truly, ROBERT W. SMITH, *Treasurer.*

SAMUEL WOODWARD, having been duly affirmed, was examined as follows:

By Mr. JOHNSON:

Q. You are assistant treasurer of the Philadelphia Saving Fund?

A. Yes, sir.

65 Q. There was a subpoena to bring the books which showed the transactions between William M. Runk and your fund?

A. Yes, sir.

Q. Can you tell us what bonds or securities he had pledged there as collateral for his individual loans?

A. I can; yes.

Q. Let me first call your attention to an individual transaction. Tell us if at any time he pledged \$10,000 of Steubenville & Indiana bonds, and, if so, give the first date they were pledged with you?

A. (Referring to book.) October 1, 1885, \$10,000 Steubenville & Indiana Railroad Company seven per cent. bonds.

Q. As security for what were they pledged?

A. For a loan of \$10,000 to William M. Runk individually.

Q. How long did those Steubenville bonds continue to remain pledged with you?

A. From 1885 to 1887.

Q. Always as security for notes of William M. Runk?

A. Yes, sir.

Q. Was there any pledge of \$12,000 of Norfolk & Western bonds?

A. Yes, sir.

Q. When first?

A. August 29, 1891, as security for a loan of \$10,800 to William M. Runk on his note.

Q. What other bonds or securities were pledged as collateral for those loans?

A. \$10,000 of Camden & Atlantic and \$1,000 Cincinnati City seven and three-tenths, pledged April 10, 1890, as security for a note of William M. Runk's for \$11,000.

Q. They were taken away when?

A. November 8, 1891. \$5,000 of those were taken away November 8, 1891, and the residue November 11, 1892, by H. B. Tener.

Q. But I mean the Camden Atlantic bonds were taken away by Mr. Ritter, executor.

A. No; Mr. Ritter only took away \$1,000 of Cincinnati seven and three-tenths.

Q. Tener took the \$5,000 of Camden & Atlantic?

A. Yes, sir.

Q. Was there any loan you had with Runk?

A. Yes, sir; April 11, 1889, there was a note of Runk's for \$15,000.

Q. On which was pledged what?

A. \$10,000 Camden & Atlantic, \$3,000 Germantown Passenger Railway fives, \$1,000 Cincinnati seven and three-tenths, and \$1,000 Pennsylvania Railroad six per cent. loans. That was paid off April 11, 1890.

Q. Is there any other loan?

A. No other loan.

66 Cross-examined.

By Mr. BISPHAM:

Q. What securities were held by the society on the 1st of November, 1891, as collateral for Mr. Runk's note?

A. We had on that day, November 1, 1891, two loans of Runk's, one for \$11,000 and one for \$10,800.

Q. What collateral did you have?

A. For the \$11,000 we had \$10,000 Camden & Atlantic sixes and \$1,000 Cincinnati City seven and three-tenths. For the loan of \$10,800 we had \$12,000 Norfolk & Western sixes.

Q. Were those loans taken up prior to Mr. Runk's death, or any part of them, the date of his death being October 5, 1892?

A. Yes, sir; \$5,000 were taken up November 9, 1891.

Q. The rest were not taken up until after his death?

A. Not until subsequently, after his death.

WILLIAM G. SHERTEL, having been duly affirmed, was examined as follows:

By Mr. JOHNSON:

Q. You are one of the officials of the Farmers' & Mechanics' bank?

A. Yes, sir; in the transfer department.

Q. They are the agents for the transfer of city loans?

A. Yes, sir.

Q. Turn to your book and see if there was any city loan paid to William M. Runk, treasurer of city missions, and, if so, when?

A. January 31, 1890, \$1,100.

Q. That was in two certificates?

A. Two certificates, \$700 of six per cent. untaxed and \$400 six per cent. taxed.

Q. And it stood in what name?

A. The Philadelphia Protestant Episcopal City Mission for House of Mercy.

Q. And it was taken up by Mr. Runk on that date?

A. William M. Runk as treasurer.

(Cross-examination waived.)

WILLIAM G. HOPPER, having been duly affirmed, in answer to Mr. Bispham, Mr. Johnson states:

Mr. JOHNSON: I propose to prove that this witness is a creditor of the estate to the amount of \$7,756.88, which credit is due to him in the course of speculative stock transactions of William M. Runk, and also to prove the extent of those speculative transactions and the time of their commencement, and that for two or three years anterior to this Mr. Runk was speculating and making and losing largely.

(Objected to. Objection overruled.)

67 By Mr. JOHNSON:

Q. You are a member of the stock-broking firm of William G. Hopper & Co.?

A. I am.

Q. Did you have transactions for a period of two or three years antecedently to the death of William M. Runk, with him?

A. We did, yes, sir.

Q. Can you tell the magnitude of those transactions for two or three years immediately antecedent to October, 1891?

A. To the best of my recollection he would buy and sell stocks, probably from 100 to 300 shares, several days in succession, and then there might be a lapse of a day or two. He was in the market day after day, off and on, to a very limited extent; that is, to the extent some days of 200 or 300 shares, possibly 500 shares. He would go in and buy in the morning, probably, and close his stock transactions in the afternoon.

Q. That 500-share transaction might involve a purchase of \$40,000, might it not?

A. It would depend on the price of the stock, yes.

Q. That was the extent of your transactions in a limited way?

A. To the best of my knowledge and belief.

Q. Do you know whether by October, 1891, he had lost or gained?

A. He was both making and losing; but the average, I should think was a loss, to the best of my knowledge.

Q. Did he pledge any securities at any time to cover those transactions, or were they merely cash margin?

A. They were cash margins with the exception of thirty shares of Pennsylvania Railroad stock, which was deposited some time during that period.

Q. That stood in the name of his mother, did it not?

A. In the name of his mother or sister, I have forgotten which. It wasn't in his own.

Q. The other things were cash margins that he put up?

A. Cash margins to the best of my knowledge and belief.

Q. Then I suppose you would settle up those accounts of selling and buying from time to time, and if there was a balance against him he would pay it?

A. Yes, sir; he would deposit something on account of it. Our custom is to make monthly accounts.

Q. At the time of his death he was indebted to your firm on these speculative transactions, and you proved as creditors to the amount of \$7,756.88?

A. He was.

Q. That was all in his speculative purchases, was it not?

A. That was all.

Q. And that indebtedness covered what period? Up to when had he settled, antecedently to his death?

68 A. He made no settlement. It was an open account. I have a copy here dating back to 1891, and then I have my book there showing prior to that. That was the copy that was in the orphans' court. That will give you the average of the operations, I think. That is a copy of the ledger.

Q. Here is your account of your dealings with William R. Runk from July 1, 1891, down to the time of his death, and liquidation afterwards. (Paper shown witness.)

A. Yes, sir.

Q. And that shows the amount of the dealings with him in stocks?

A. It does.

Q. Was a single one of all these shares representing those dealings ever delivered to him?

A. Not to my knowledge.

Q. The account was made up, the difference was ascertained, and he was asked to pay that difference?

A. Yes, sir.

Q. I see here that balance on the account is \$1,189, but that there was a note given on the 1st of September, 1892, for \$6,099.15, which with interest to the time of the orphans' court adjudication, \$433, made an addition of \$6,532 that he was owing you?

A. Yes, sir.

Q. And that note given you on the 1st of September, 1892, and unpaid at his death, covered an additional amount of loss up to that time?

A. That was the result of the account, the closing up of his account with us, for the period of time he traded in stock.

(Mr. Johnson offered in evidence on behalf of defendant the account referred to, which will be found annexed to the testimony following page —.)

Cross-examined.

By Mr. BISPHAM:

Q. Are you able to tell how much, if anything, Mr. Runk owed, say on the 1st of November, 1891?

A. I can't recall the amount, no, sir.

Q. Can you approximate it?

A. I don't keep the books, and I am not conversant just as to the exact figures.

Q. On October 31st, there was a balance of \$18,000. Is it not a fact that the stock which you were buying for Mr. Runk was held as collateral?

A. It was. We took and paid for the stock that he bought, and held it against his account, and we advanced the money. He paid us something on account, and we carried the stock for him. If he had presented his check for the amount of the stock we were carrying we would have had it in stock, a hundred St. Paul, or 500 St. Paul, or 300 or 500 Reading.

69 Q. You always required him to keep up a margin as nearly as possible?

A. We did. That is the custom.

Q. Is it not a fact that in October, 1892, when this balance appears to be something like \$5,800, you held blocks of stock as collateral; say September 30, 1892?

A. I presume we did.

Q. Don't that account show?

A. We were carrying according to this account several hundred Lehigh Valley and a hundred Pacific preferred.

By the COURT:

Q. Did you have the certificates of that stock?

A. We had.

Q. In his name?

A. No, sir; in our name, because we advanced money on them. They didn't belong to him until he paid for them.

By Mr. BISPHAM:

Q. For this debt of over \$6,000 proved against the estate you held collateral, did you not?

A. We did.

Q. You were not simply an unsecured creditor of the estate, were you?

A. I oughtn't to say that we held collateral. After we had disposed of his collateral which we held he owed us \$6,000 and some odd, whatever the amount was, I have forgotten the exact figures.

Q. That was after disposing of the collateral?

A. That was the debit, yes. That is what he owed us.

Q. The collateral was sold out?

A. The collateral was sold out by order of the executor.

Q. Because the margin was not kept up?

A. Yes, sir.

Q. So the transaction turned out to be a loss?

A. A loss to the extent of over \$7,000.

Q. You spoke about Mr. Runk putting up some shares of Pennsylvania railroad which stood in the name of his mother, I believe?

A. His mother or sister, I have forgotten which.

Q. Of course that certificate had on its back or attached to it a power of attorney to transfer signed by the mother or sister?

A. It had.

Q. You did not suppose that Mr. Runk was using other people's securities or you were taking other people's securities, did you?

A. We did not.

Re-examined.

By Mr. JOHNSON:

Q. You supposed the thirty shares of his mother or sister were in this stock-gambling pool, did you not?

70 A. The thirty shares of Pennsylvania Railroad stock he left I think at the time with the expectation of selling it.

Q. But what became of it; was it sent to cover his losses?

A. We sold it by order of the executor. We had it on the account at the time of his death.

T. H. POWERS FARR, having been duly sworn, was examined as follows:

By Mr. JOHNSON:

Q. Are you a member of the firm Kilbreath, Farr & Co.?

A. That was the name of our firm at the time we had our transactions with Mr. Runk.

Q. That is a firm of stock brokers in New York?

A. Yes, sir.

Q. Turn to your account with William M. Runk and tell us what the magnitude of it was. It was a stock-speculating account?

A. A stock-trading account, yes. It wasn't a very large account. I think he bought about 1,500 shares a month on an average. (Referring to book.) The account was opened February 2, 1891.

Q. The transactions during that month, which was a short month, were \$148,000, were they not?

A. Yes, sir.

Q. The next month the transactions amounted to \$134,000?

A. Yes, sir.

Q. The next month they amounted to about \$90,000 odd?

A. Yes, sir.

Q. The next month they amounted to \$124,000?

A. Yes, sir.

Q. And the next month, June, to about \$39,000?

A. Yes, sir.

Q. That was one side of the account ?

A. Yes, sir.

Q. Then on the other side of the account the transactions were equally great ?

A. Yes, sir ; he bought and sold about the same amount.

Q. In that aggregate of about \$560,000 of stock bought and sold, how much was delivered ?

A. None.

Q. I think you are creditors of this estate for the amount of \$6,304 on this trifling account, are you not ?

A. Yes, sir.

Q. You will get out of this insurance money something, if it is recovered ?

A. Part of it has been paid.

Q. When he died the balance was bigger than that ?

A. That is only the first few months.

71 Q. In July the transactions were \$34,000 ?

A. Yes, sir.

Q. In August they were only about \$49,000 ?

A. Yes, sir.

Q. And in September only about \$65,000 ?

A. Yes, sir.

Q. In October of that year they were \$25,000, in November about \$8,000, in December of that year about \$80,000 ?

A. Yes, sir.

Q. In January, 1892, the transactions were about \$45,000 ?

A. Yes, sir.

Q. In February, 1892, they were \$58,000, in March, 1892, about \$68,000, and in April, 1892, they were about \$28,000 ?

A. Yes, sir.

Q. In May you were liquidating ?

A. Yes, sir.

Q. Then in May, 1892, they were \$60,000, in June, 1892, they were \$44,000 ?

A. Yes, sir.

Y. And the residue of the time about \$42,000 ?

A. Yes, sir.

Q. It ended in a balance of how much ?

A. He owed us \$9,000, and then we had \$3,000 in Camden and Atlantic bonds, which we sold.

Q. That is the balance that you proved against the estate ?

A. \$6,421.

Q. Those transactions were on margin, of course ?

A. Yes, sir.

Q. He had put up cash margin, and then when that would go he would put up more ?

A. Yes, sir.

Q. So that when he died it was all gone, and there was something left to come from the estate ?

A. Yes, sir.

Cross-examined.

By Mr. BISPHAM :

Q. You were always careful, I suppose, to have Mr. Runk keep up his margin, were you not?

A. Yes, sir; I used to see Mr. Runk personally and receive assurances about his financial condition from time to time, and had no uneasiness whatever about being able to collect any amount due us at any moment.

Q. I am speaking about the cash margin that was deposited and the stock you held and bought for resale?

A. Yes, whenever we allowed it to run behind we had a note or assurances that we could receive the money when we required it.

Q. You speak of running behind. The purchases were 72 large, but the sales were correspondingly large, were they not?

A. Yes, sir.

Q. So that the difference would be a comparatively small amount?

A. Yes, sir.

Q. And for that you had margin?

A. Yes, sir.

Re-examined.

By Mr. JOHNSON :

Q. Do you know whether that \$3,000 of Camden and Atlantic bonds went to Mrs. Barcroft's attorney, Mr. Tener?

A. I think they were taken by the estate. I don't know to whom they were paid.

Q. Did you ever have to call on Mr. Runk for margin more than once?

A. Yes, sir.

Q. You would press him, of course?

A. Not very much.

Q. Enough to get the money?

A. No, not always.

Q. You do not know whether any of this cash which you got was the cash that was drawn from Darlington, Runk & Co.?

A. No, I do not.

WILLIAM L. BROWN, having been duly sworn, was examined as follows:

By Mr. JOHNSON :

Q. You are assistant treasurer of the Pennsylvania Company for Insurance on Lives and Granting Annuities?

A. Yes, sir.

Q. You were subpoenaed here to bring your books showing your dealings with Mr. Runk for a certain period?

A. Yes, sir.

Q. Was there any loan made by the company to Mr. Runk, and, if so, when and on what security?

A. On May 31, 1889, Mr. Runk got a loan on his own personal note.

Q. How much was his note for?

A. \$3,600.

Q. Then there was an additional amount?

A. There was a subsequent loan of \$1,500 July 9, 1889.

Q. What collateral was there?

A. \$6,000 Philadelphia, Wilmington & Baltimore four per cent. stock trust certificates.

Q. In whose name did those stock trust certificates stand?

A. I have forgotten the name.

73 Q. In the Episcopal city mission?

A. Yes, the Episcopal city mission.

Q. Who paid that loan off?

A. The executor, Mr. Ritter.

Q. After death?

A. Yes, sir.

(Cross-examination waived.)

HORACE H. LEE, having been duly sworn, was examined as follows:

By Mr. JOHNSON:

Q. You are or were a member of the firm of Bickley, Lee & Johnson?

A. Yes, sir.

Q. They were stock brokers?

A. Yes, sir.

Q. And they claim against this estate the amount of \$2,504.19?

A. Yes, sir.

Q. Is that a balance due on speculative stock transactions?

A. Yes, sir.

Q. State the nature of those transactions.

A. I only looked after this end. He simply placed margins here and I only have the books here in which we credited them to New York. I can't give you the cash that was transmitted. He commenced his transactions with us the 1st of February, 1891.

Q. He did business altogether on margin?

A. Yes, sir.

Q. No stocks were actually delivered to him?

A. Not to him, but they were of course paid for.

Q. He never got one of these shares that he bought or sold?

A. Not with us; no, sir.

Q. How large or small were those transactions?

A. Sometimes he would buy a thousand shares a day, and sometimes nothing.

Q. About how much cash went all in one direction from him to New York as margins or settlements? The first year, ending in 1891, how much was he to the bad?

A. I suppose he was out about \$10,000 the first year.

Q. And the second year, of course, he made it all up, or did he come out worse?

A. Worse.

Q. And the transactions were small, but they reached the magnitude of a thousand shares a day?

A. Sometimes they were a little heavier than that.

Q. So that in one day, if the stock was perhaps selling for \$50 a share, 1,000 shares would be a \$50,000 transaction?

A. Yes.

74 Q. Did he settle up the balances monthly?

A. No, sir; we made him settle up whenever he owed us any money.

Q. You did not give him any credit? Did you ever have to call twice on him for money?

A. No, sir; we always asked him and he always responded. We wouldn't have had any business with him if he didn't.

Q. The only condition on which he could continue this privilege of losing money would be by paying up the cash as he went?

A. Yes, or any one else.

(Cross-examination waived.)

RUSSELL E. TUCKER, having been duly sworn, was examined as follows:

By Mr. JOHNSON:

Q. With what stock-broking firm are you connected?

A. R. E. Tucker & Co., Philadelphia.

Q. Did you have any speculative stock transactions with Mr. Runk?

A. Yes, sir.

Q. Have you your book there?

A. Yes, sir. -They were small.

Q. In the month of January, 1891, those little transactions amounted to \$116,000, did they not?

A. Yes, sir.

Q. And in the months of February and March they amounted to \$69,000, did they not?

A. Yes, sir.

Q. In the month of April they amounted to \$47,000?

A. April and May.

Q. In June they had gotten down to but \$25,000?

A. Yes, sir.

Q. And in August and September they got down to \$4,000, during the year 1892?

A. Yes, sir.

Q. How many shares of stock did you ever deliver to him?

A. We never delivered any.

Q. You dealt on margin, I take it?

A. Yes, sir.

Q. At the time of his death he owed you nothing?
A. No.

Cross-examined.

By Mr. BISPHAM:

Q. You kept his margin up?

A. Yes, sir.

75 Q. And although the transactions were large on each side of the account the difference was small?

A. The difference was small, yes.

Q. Mr. Johnson has asked you about these stock transactions and spoken of their size. Are those unusually large transactions?

A. No. One month there might have been large, amounted to \$135,000. The others were not.

Q. A good many people are speculating to the same extent, I suppose?

A. Yes, sir. It depends on the price of the stock whether the transactions are large or not, according to the totals.

Q. What was it that made you say the transactions were large?

A. There was a total of \$135,000 bought, but the balance at the end of that month was \$7,200. The difference was only \$7,200.

Q. What year was that?

A. That was in January, 1892.

Re-examined.

By Mr. JOHNSON:

Q. I suppose these would be pretty large transactions though for a man in the position of using trust certificates? You mean it would not be a large transaction for a millionaire?

A. Of course, I didn't know anything about that.

By Mr. BISPHAM:

Q. You would not have any transactions at all if you know the person was using trust funds?

A. No.

By Mr. JOHNSON:

Q. If he told you his true condition you would not have dealt with him?

A. No.

CHARLES D. BARNEY, having been duly affirmed, was examined as follows:

By Mr. JOHNSON:

Q. Your firm was the Philadelphia office of Kilbreath, Farr & Co. in 1892, was it not?

A. Yes, sir.

Q. Do you remember some \$3,000 of bonds they held that were taken up by the executor of Mr. Runk?

A. Yes, that is my recollection of it.

Q. The bonds of what company were those?

A. I never looked that up. I cannot say what kind of bonds they were, nor whom they were delivered to.

Q. You do not know who got them?

A. No, sir.

(Cross-examination waived.)

76 Mr. Johnson asks for the dates and amounts of the policies taken out subsequent to October, 1891, which is furnished by plaintiff's counsel, as follows:

\$50,000 in the Home Life Insurance Company, January 16, 1892, annual premium \$1,900.

Mutual Life Insurance Company of New York, four policies, as follows:

\$40,000, annual premium, \$1,536; \$20,000, annual premium, \$782; \$15,000, annual premium, \$586.50; \$20,000 for the benefit of the wife.

EFFINGHAM PEROT, having been duly affirmed, was examined as follows:

By Mr. JOHNSON:

Q. You are the present treasurer of the Philadelphia city mission?

A. Yes, sir.

Q. Have you there the books you received from the executor of Mr. Runk after his death?

A. Yes, sir.

Q. This black book which we have used, marked "ledger," was one of those books, was it?

A. Yes, sir.

Q. And this black book marked "cash book" was one?

A. Yes, sir.

Q. What else was there?

A. This is the check book.

Q. You have a settlement made after his death with Mrs. Barcroft?

A. Yes, sir. (Producing same.)

Q. How much in round numbers in securities and cash was he short on the settlement, \$86,000?

A. I have no knowledge of that. I turned over all the securities. Where they came from I never had any knowledge. I never was brought in contact with anybody except Mr. Ritter.

Q. This is the settlement that was made with Mr. Ritter, is it not?

A. No; that was made with Mrs. Barcroft in Mr. Bullitt's office. I have no personal knowledge of any shortage whatever. The securities were turned over to me, and I have no further knowledge.

Q. There was a lot of cash turned over to you, was there not?

A. Yes, sir.

Q. And it was turned over through a settlement made with Mrs. Barcroft?

A. No, sir; I received from Mr. Ritter securities and money.

Q. Did you not ascertain that some of the securities were intact, and you got them, and some there was a settlement for?

A. There were some securities that were turned over immediately, and there were some that there was a delay of a few days.

—?

A. Yes.

77 Mr. Johnson offers in evidence on behalf of defendant the settlement referred to.

Cross-examined.

By Mr. BISPHAM:

Q. In whose handwriting are the entries of this little black book?

A. I really don't know. They are not in Mr. Runk's handwriting. They are in somebody's handwriting who kept the books for him.

By the COURT:

Q. Does the book contain his transactions?

A. Yes, sir; I think so.

By Mr. BISPHAM:

Q. Do you know whether any entries were made in this book after Mr. Runk's death, or whether the book was carried down after his death?

A. No, sir, not by me, nor do I know of any.

Q. Turn to page 130 of that book, and see if you find there a loan account for \$10,000?

A. Yes, sir.

Q. Under what date?

A. 1889, balance brought forward from page 110. The date on page 110 is March, 1889.

Q. What is your position in the city mission?

A. I am treasurer.

Q. How long have you been treasurer?

A. About a month after Mr. Runk's death I was appointed.

Q. From your examination of the books of the city mission are you able to say whether interest was paid on that loan of \$10,000?

A. Yes, I think it was.

Q. Up to what date?

A. June, 1892.

Q. Was it paid every six months?

A. It appears to have been paid every three months.

Q. The interest was paid up to within three months of Mr. Runk's death?

A. Yes, sir.

Q. You find on page 108 another loan of \$10,000, do you not?

A. Yes, sir. I take it that it is the same loan.

Q. There are two loans, apparently, of \$10,000, one on page 130 and one on page 110.

A. That is brought forward in this book.

Q. That is brought forward from page 108 to page 130?

A. Yes, page 130 is the balance brought forward from page 110. The other is 108.

Q. On page 108 you found that other loan?

A. Yes, sir.

78 Q. What is the date of that?

A. That refers back.

Q. What is the original date?

A. That appears to have been brought forward from original loans made in 1882. The account has gone through a good many changes in that time, and the balances are brought forward.

Q. Does it show to whom the loan was made?

A. It was D. R. & Co., the original entry.

Q. That is, Darlington, Runk & Co., I presume?

A. Yes, I presume so.

Q. Was the interest paid on that?

A. Yes, it appears to have been paid.

Q. Up to what date?

A. I should think that was July, 1892. It is a little difficult to see the figures. It is either January, 1892, or July, 1892.

Mr. Johnson offers in evidence on behalf of defendant the black book marked "Ledger," referred to.

Mr. Johnson also offers in evidence on behalf of defendant the following agreement:

Know all men by these presents, that

Whereas, William M. Runk, late treasurer of the Protestant Episcopal city mission, at the time of his death, on October 4, 1892, had in his possession as treasurer of the said Philadelphia Protestant Episcopal city mission the sum of \$24,063.85 in cash and the following securities:

\$10,000 Steubenville and Indiana Railroad bonds.

7,000 Phila. and Reading Railroad bonds.

1,000 Phila. and Reading Railroad bonds.

5,000 Lehigh Valley Railroad Company 4½ per cent. bonds.

20,000 notes of Darlington, Runk & Co.

6,000 Philada., Wilmington and B. R. R. 4 per cent. bonds.

3,000 Germantown Passenger Railway bonds.

4,000 Lehigh Coal and Navigation 6 per cent. gold bonds.

8,000 Northern Central consolidated gold mortgage 6 per cent. bonds.

And whereas, A. Howard Ritter, executor of the estate of William M. Runk, has paid to the said Philadelphia Protestant Episcopal city mission, on account of the same, the sum of \$2,100 in cash, and has handed to the said Philadelphia Protestant Episcopal city mission the following securities:

Cash for two notes of Darlington, Runk & Co., \$20,000.
 \$3,000 Lehigh Valley Railroad Company $4\frac{1}{2}$ per cent. bonds.
 6,000 Philada., Wilmington and B. R. 4 per cent. bonds.
 4,000 Lehigh Coal and Navigation 6 per cent. gold bonds.
 6,000 Northern Central consolidated gold mortgage bonds.
 leaving a balance due at the date hereof of \$21,963.85 in cash, and the following securities:

79 \$10,000 Steubenville and Indiana Railroad bonds.
 7,000 Phila. and Reading Railroad bonds.
 1,000 Phila. and Reading Railroad bonds.
 2,000 Lehigh Valley Railroad Company $4\frac{1}{2}$ per cent. bonds.

And whereas, owing to the settlement of the estate of the said William M. Runk, the executor may not be in a position to pay over the balance of the said cash and securities until the expiration of one year from the date of the death of the said William M. Runk.

And whereas, the Protestant Episcopal city mission desires to obtain the full amount in the hands of the said William M. Runk on the day of his death prior to the expiration of said year, and Mary A. Barcroft is willing to forthwith pay the following amount due said Protestant Episcopal city mission and to take an assignment of its said claim against the estate of said William M. Runk so that said Protestant Episcopal city mission shall have the use of its funds at once.

Now, therefore, in consideration of the premises, as well as in consideration of the sum of \$31,963.85 in cash in hand paid and the delivery of the following securities:

\$7,000 Phila. and Reading Railroad bonds.
 1,000 Phila. and Reading Railroad bonds.
 2,000 Lehigh Valley Railroad Company $4\frac{1}{2}$ per cent bonds.

the receipt whereof is hereby acknowledged, the said Philadelphia Protestant Episcopal city mission has and it has by these presents assigned and set over unto the said Mary A. Barcroft, to her own proper use, without any account to be given for the same, all sum or sums of money or securities due or owing by the said estate of William M. Runk to said Philadelphia Protestant Episcopal city mission by virtue of his having been the treasurer of the same, and all the right, title, interest and demand in and to the same. And the said Philadelphia Protestant Episcopal mission doth give and grant to said Mary A. Barcroft full power and authority to demand and receive said money and securities to her own proper use and behoof and upon receipt thereof to give discharges for the same or any part thereof.

Witness the corporate seal of the said Philadelphia Protestant Episcopal city mission duly attested this eighteenth day of February, 1893.

(Signed)

[SEAL.]

PHILADELPHIA PROTESTANT
EPISCOPAL CITY MISSION,

By O. W. WHITAKER, *President.*

Attest: W. A. FARR, *Secretary.*

Mr. Johnson states that defendant will offer in evidence when it has been prepared by plaintiff's counsel, a list showing the policies of insurance and dates subsequent to October, 1891, on the life of Mr. Runk, and the amount of premiums paid on said policies and on those heretofore issued.

80 FRANK E. HAMMER, having been duly sworn, was examined as follows:

By Mr. JOHNSON:

Q. You are connected with the John Hancock Life Insurance Company?

A. Yes, sir; I am district manager.

Q. Had your company given any insurance policies on the life of Mr. Runk after October, 1891?

A. Yes, sir.

Q. To what amount?

A. \$20,000.

Q. What was the annual premium?

A. \$452 each. There were two policies of \$10,000 each, and they aggregated \$904 premium.

Q. When was it issued?

A. It was issued January 27, 1892.

Cross-examined.

By Mr. BISPHAM:

Q. You are a representative of the John Hancock Company?

A. Yes, sir.

Q. That policy was paid, was it not?

A. Yes, sir.

Mr. Johnson offers in evidence on behalf of defendant the application signed by William M. Runk, dated Philadelphia, November 6, 1891, on the basis of which the policy of insurance in this case was issued.

(Objected to on the ground that it appears by the policy offered in evidence that the application was not attached to the policy, and, under the act of 1891, the application not being attached to the policy is not to be considered as part of the contract, nor is it admissible in evidence.)

Mr. Johnson offers in evidence this paper not for the purpose of making the same as an application part of the contract, but for the purpose of proving that an independent contract was entered into by William M. Runk, by which he agreed that he would not die by his own act, whether sane or insane, during the said period of two years, and he offers it as a collateral contemporaneous agreement.

(Objected to. Decision reserved.)

Defendant rests.

Plaintiff's Rebuttal Evidence.

HAROLD PIERCE, having been duly affirmed, was examined as follows:

By Mr. BISPHAM:

Q. What is your business?

A. Insurance agent.

81 Q. Where do you reside?

A. In Germantown.

Q. Where do you carry on your business?

A. No. 331 Walnut street, Philadelphia.

Q. How long have you been engaged in the insurance business?

A. Since 1886.

Q. Have you been engaged in that business in Philadelphia since that time?

A. I was in Philadelphia a short time in 1886, and then I went to Pittsburg and stayed until the latter part of 1891, when I returned to Philadelphia, and since then have been here.

Q. Did you know William M. Runk?

A. I did.

A. When did you make his acquaintance?

Q. About 1878, I should say, to 1880, somewhere in that neighborhood.

Q. Did you place any insurance for him in 1886?

A. Yes, sir.

Q. In what company?

A. The New York Life.

Q. Are you an agent of that company?

A. I am an agent of that company.

Q. How much insurance did you get Mr. Runk to take in the New York Life Insurance Company?

A. \$50,000 at that time.

Q. You had nothing to do with the arrangement of the other \$50,000 that Mr. Runk afterwards took out?

A. No, sir; I had nothing to do with that. This was in 1886 that I wrote this.

Q. State what interviews you had with Mr. Runk on that subject, and what difficulty, if any, you had in getting him to make the insurance.

A. I had a number of interviews with him, and it took considerable time to get him to finally decide to take that policy.

Q. Was there more than one policy, or do you not recall?

A. I couldn't say whether it was in one or two policies.

Q. That was all he was induced to take in 1886?

A. Yes, sir.

Q. Then I understood you to say you left Philadelphia and afterwards returned?

A. I left Philadelphia a short time after that.

Q. You returned when?

A. In 1891.

Q. Do you recollect what month you came back?

A. I came back to Philadelphia in September of 1891.

82 Q. What did you do with reference to endeavoring to effect an insurance on Mr. Runk's life after your return to Philadelphia?

A. I went in to see him after that when I came back and asked him if I couldn't try to put him in some other companies.

Q. How soon after your return to Philadelphia did you see Mr. Runk on this subject?

A. I should say right at the latter part of September, or the beginning of October, 1891.

Q. Was that soon after your return?

A. Yes, sir.

Q. Where did you call on Mr. Runk?

A. At his office.

Q. How often did you see him?

A. A number of times.

Q. At your first interview was any amount of insurance mentioned between you?

A. Not that I know of.

Q. Did Mr. Runk agree to take any insurance at that first interview?

A. I should say no.

Q. Did you see him again?

A. Yes, sir.

Q. What did he say at this interview when you wanted him to take insurance?

A. It is hard to remember just what took place at this time.

Q. Can you without giving the words say whether he said he would or would not take it?

A. I know when I first saw him he wouldn't consent to any insurance, and it took several interviews to get him to do it, but as to the exact words I couldn't tell you.

Q. After you had these several interviews with him, and he consented, was any amount named then?

A. Oh, a small amount.

Q. What do you mean by "a small amount"?

A. \$10,000, \$15,000 or \$20,000.

Q. Had you reference to any other amounts or any other insurance when you spoke of "small amounts"?

A. No.

Q. After you had these conversations with Mr. Runk on the subject of insurance did you or did you not see Mr. Lambert of this company?

A. I did.

Q. Who is Mr. Lambert?

A. General agent of the Mutual Life Insurance Company of New York.

Q. He was then?

A. He was then, yes sir.

83 Q. What did you tell him about Mr. Runk's wishing to take insurance?

A. I can only give you a general idea of what I told him. I told him I was trying to get Mr. Runk for some more insurance, and I believed I could get him for the Mutual Life; that I would do that if we could come to some agreement.

Q. What did Mr. Lambert say?

A. Mr. Lambert offered me a commission for securing him for the company.

Q. Was the commission dependent on the amount that was secured?

A. Yes, sir.

Q. Did you see Mr. Lambert more than once?

A. Several times.

By the COURT:

Q. When was this?

A. In 1891. October of 1891, I should say.

By Mr. BISPHAM:

Q. Did you see Mr. Runk again during the month of October, 1891?

A. I saw him several times before I could get him to take the insurance.

Q. What did Mr. Runk say when you were pressing him?

A. He would only consent to \$15,000 or \$20,000 at first.

Q. During your interviews with Mr. Lambert did you at any time give him a list of insurance on Mr. Runk's life that existed at that time?

A. Yes, sir.

Q. What did Mr. Lambert say to that?

A. I don't remember.

(Recess until 2 o'clock p. m.)

2 P. M.

The COURT: In regard to Mr. Johnson's offer of testimony this morning I have as decided a judgment as I could have in view of having disposed of the subject without examination, and it may be of interest to the parties to know without further delay what the decision of the court is. The representation or statement or agreement, call it by whatever name you choose, is in my estimation a part of the application for insurance, and it constitutes a condition on which the policy was applied for and obtained, as much so as any representation contained in the paper itself, and it is therefore by the statute excluded by reason of the fact that a copy was not attached to the policy. The suggestion of counsel that it is offered not to defeat the policy, but by way of set-off, or as the foundation of a claim to be set off, is in my judgment not sound. The only use that could be made of it, as I view the subject, would be to defeat the policy as one of the conditions on which it was obtained. If it could be used as the foundation of an independent claim and

thus be made the subject of the set-off, of course suit could 84 have been brought upon it before to recover back what has been paid, or could be brought upon it hereafter to recover what shall have been paid if the plaintiff here recovers. It is very clear that could not be done; no such suit could be maintained. If a suit were brought upon this agreement to recover the damages which have been suffered in consequence of the failure to keep it, why, the answer would be, this was a subject for consideration in the suit brought by the plaintiff on the policy. That suit necessarily involved it and the judgment thus obtained would be a complete answer to any suit for breach of that agreement. I refer to this simply for the purpose of showing that it cannot be used by way of set-off as a foundation for an action or for an independent claim. Its only office is to afford the defendant a defence to the policy as a condition on which it was issued. Viewing it in that light, it stands upon an equality, it cannot be distinguished, in my judgment, from any other statement or promise made in the application for insurance; in my judgment it is within the law and spirit of the statute. The statute intended that the policy shall exhibit on its face, or the policy in connection with whatever it refers to shall exhibit to the insured the conditions on which he holds the policy. The object of this would be to limit the policy of insurance, to qualify it, to make it available only in case the party lived up to this contract.

I must therefore sustain the objection.

Exception for defendant.

Examination of HAROLD PIERCE resumed.

By Mr. BISPHAM:

Q. Before the recess you stated that Mr. Runk at first was only willing to take insurance up to fifteen or twenty thousand dollars. Look at these six policies which are in evidence in this case and let me know if you recognize them. (Policies handed witness.)

A. Yes, sir.

Q. Did you see them at or about the time they were issued?

A. I delivered them to Mr. Runk.

Q. From whom did you obtain them?

A. From Mr. Lambert.

Q. Do you remember about when you delivered them to Mr. Runk?

A. I judge about a day or two after they were issued.

Q. They were dated the 10th of November, 1891?

A. Yes, sir. I probably delivered them on the 11th or 12th, after that date.

Q. You say you received them from Mr. Lambert?

A. Yes, sir.

Q. Where?

A. At the office of the Mutual Life in Philadelphia.

Q. At the time that you delivered these policies to Mr. Runk

what was said in regard to the amount of the policies that he was to take?

85 A. My recollection is that I did not give them all to him at that time.

Q. Why not?

A. I was afraid if I gave them all to him I might scare him from taking any.

Q. Why?

A. Because he was only considering about fifteen or twenty thousand dollars.

By the COURT:

Q. I do not understand you. Had he not applied for these policies?

A. I very often have more issued than what the applicant has applied for.

Q. Policies issued that no application has been made for?

A. The companies will issue an extra amount on the one application up to the limit the company will put on the man's life.

Q. If he applies for a policy of \$10,000, if he is willing to put \$50,000 on his life it will issue the policies up to \$50,000.

A. Yes, sir.

Q. And then take a subsequent application for them?

A. It is not necessary, because it is made part of the original application.

Q. That they shall issue additional policies?

A. At that time. They have to be all under that application and examination.

Q. Does not the application specify the amount?

A. Sometimes. Generally; yes, sir.

By Mr. BISPHAM:

Q. Is it not sometimes left in blank as to the amount?

A. Yes, sir; I very frequently get a signature in blank.

Q. Please explain what reason, if any, there was for dividing this amount of the insurance, \$75,000, up into these six policies?

A. Simply because only part of it he thought he would take.

By the COURT:

Q. You did not expect him to take the whole of it?

A. I wanted him to take all of it; yes, sir.

Q. You did not expect him to take it?

A. I was very uncertain whether I could get him to do it.

Q. After getting him to do it you would fill in the amount in the application you made?

A. Unless he told me that I must put in a certain amount.

Q. Did the company know you were doing business in that way?

A. It is very frequently done.

Q. You would fill in the amount after you would sign the application?

A. Yes, sir.

Q. And he gave it to you in blank?

A. Yes, sir.

86 Q. Would he be aware he gave it to you in blank?

A. Sometimes; yes, sir. Frequently we say, "Will you take a policy," and you sign that application and we bring you a policy.

Q. Without naming any amount?

A. Without naming any amount.

By Mr. BISPHAM:

Q. At all events, ultimately these policies were all taken by Mr. Runk?

A. Yes, sir.

Q. About how long were you occupied in getting him to take these policies?

A. They were not finally settled on until the end of December or the middle of January.

Q. What do you mean by settled on?

A. That he agreed to take them.

By the COURT:

Q. Do you mean he hesitated about it?

A. Yes, sir; hesitated.

Q. You urged him?

A. I urged him as hard as I could.

By Mr. BISPHAM:

Q. And he finally took them?

A. He took them.

Q. You say that was about the middle of January?

A. It was certainly the end of December or the middle of January. Not before that.

Q. After Mr. Runk concluded to take this full line of insurance, \$75,000, did he have any conversation with you on the subject of insuring his life in the Home Life?

A. Yes, sir.

Q. When did you have that talk with Mr. Runk?

A. Some time in the middle of January, 1892.

Q. Were you agent for the Home Life?

A. No, sir.

Q. Who was?

A. William M. Moore.

Q. What did Mr. Runk say when he spoke to you about taking out insurance in the Home?

A. I asked him if he would take it as a favor to Mr. Moore, and after a little talk he said, "Oh, well, I will take a small policy with you."

Q. Did you report that to Mr. Moore?

A. I reported that to Mr. Moore.

Q. What did you say to Mr. Runk, if anything, to induce him to take this additional amount?

87 A. In the Home Life do you mean?

Q. Yes.

A. After Mr. Moore became agent of the Home Life he asked me if I would not see Mr. Runk, as I had insured him, and see if he would not give him a start in his business in Philadelphia. So I went to Mr. Runk and said that Mr. Moore, who was formerly with the New York Life, had taken the agency of the Home Life, and asked him if he would not as a favor start Mr. Moore on a policy for insurance. I said that I had been a customer there for many years, and that if he would take this policy I thought we could induce Mr. Moore to also become quite a good customer at that place, Darlington & Runk's. That is about the terms I used at first with Mr. Runk.

Q. Afterwards did you refer to any other persons holding large lines of insurance?

A. Yes, sir.

Q. Tell us what it was.

A. Afterwards when Mr. Moore and myself met Mr. Runk we used the inducement that it would be very nice if he would become the third largest insurer in the country, and we used that argument for all it was worth; we said it was not possible for him to get the second, I think, that John Wanamaker and Hamilton Disston were considerably above him, but by taking this additional in the Home, and a little more he could become the third largest in the country.

Q. That was before he had agreed to take this policy in the Home?

A. That was before he had agreed to take more than five or ten thousand dollars in the Home Life. That is all he had agreed to take when we used this argument.

Cross-examination.

By Mr. JOHNSON:

Q. Let us get your relations to this matter. You never were the agent requested by the Mutual Life Insurance Company of New York to obtain life insurance takers, were you?

A. No, sir.

Q. You were the agent of an entirely different company, the New York Life, were you not?

A. Yes, sir.

Q. You received from them special permission to act as their agent?

A. Yes, sir.

Q. Had you any license to act as an insurance broker?

A. No, sir.

Q. But you did act notwithstanding you had no license, did you?

A. I occasionally got other insurances.

Q. Your desire was to get insurance and get a commission on it? To get people to take insurance, was it?

A. Yes, sir.

88 Q. And you had no authority from the Mutual or the Home to do that business?

A. I never acted for the Home Life.

Q. If Runk was so little anxious to get this insurance, how is it that he went and insured beyond all this in the Berkshire \$20,000 and the John Hancock \$20,000?

A. He insured in the Berkshire because he told us it was impossible for him to take this increased amount in the Home Life, unless he fulfilled a pledge to an agent in the Berkshire that before he took other insurance he must do something for him. We said, "All right, give it to him."

Q. He told you he had to take \$20,000 in the Berkshire if he took this additional quantity?

A. Yes, sir.

Q. How about the John Hancock; there was no pledge there, was there?

A. We argued that in order to get him into the third highest insured man in the country.

Q. Did you not tell us that story about the third highest as having occurred after this thing had been done when you testified before?

A. Not that I know of.

(Reading.) "Q. When did you see Mr. Runk last before his death; how shortly before? A. Two or three days. Q. Where was he? A. In his store. Q. Did you discuss insurance matters with him then? A. Yes, sir. Q. What insurance matters did you discuss? A. I can't tell the exact wording at that time, but for some time I had been saying to him, 'Mr. Runk, there are three men today that are more heavily insured than you are, and by a very little more insurance you can become the third man. That is as strong and high as you will go. Why not become the third insured man in the country?' I had been working on that for some time with him. Q. How much had he gotten up to at the time you began to apply? A. I don't remember the exact figures. You know better than I do. Q. You must have known it was somewhere over \$500,000? A. There were three men ahead of him and I wanted him to go to the third place. I knew he would not take the second place."

Mr. Johnson continued to read from testimony until the end of the answer, "Oh, well, I will think of it. Something of that kind he said. Of course I wanted to push it for all he was worth." That is what you did then?

A. I did; and I believe the same argument was used for the Mutual Life.

Q. Do you want this jury to understand that these insurance policies came back from New York before you had talked, as you say, Runk beyond ten or fifteen thousand dollars?

A. Yes, sir.

Q. Had you discussed any part of that ten or fifteen thousand dollars being put in the name of the wife?

89 A. Undoubtedly.

Q. How much was to be put in the name of the wife?

A. I don't remember now.

Q. Ten or fifteen thousand was the aggregate, and all that you had discussed before the policies came back. Suppose I show you this application in which it is said the full name of the person to whom "the insurance is payable to self, except one of twenty thousand dollars to be in favor of Evelyn P. B. Runk, if living, if not, to my estate."

(Objected to. Objection overruled. Exception for plaintiff.)

Q. Won't you explain to this jury why *and* if you and Runk had only talked about ten or fifteen thousand dollars being taken by him until after these policies had come back from New York that in the application which was sent over to New York his wife was named as a beneficiary to the extent of \$20,000 of one policy?

A. Because I thought if I placed a larger amount that his wife should have some of the benefit of it.

Q. But the larger amount of \$10,000 or \$15,000 is not only the larger amount, but a good bit more than the amount. But a policy of \$20,000 in the name of his wife came back from New York, did it not?

A. Yes, sir.

Q. And six other policies came back from New York, did they not?

A. Yes, sir.

Q. All signed and sealed and executed?

A. Yes, sir.

Q. Four of \$10,000, one of \$20,000 and one of \$15,000, did they not?

A. Yes, sir.

Q. You want this jury to understand that these six policies, aggregating \$75,000, and the policy in favor of the wife of \$20,000 came back from New York signed, sealed and executed, and you had only talked to this man prior to that time of \$10,000 or \$15,000 insurance. Do you?

A. That is all that was actually considered.

Q. How on earth did these policies come to be made out, four of \$10,000, one of \$20,000 and one of \$15,000, if you had not discussed with him the manner in which the policy would be cut up?

A. It is a very common practice to get policies cut up into different amounts so if you cannot place the whole amount to place part. We are very apt to do it.

Q. Do you mean to say that these policies were executed in six different executions in different amounts and you had no talk to this man before the application went on the subject of the division?

A. I do not recollect that these special amounts were fixed between Mr. Runk and myself.

Q. Does not the application contain a statement on its face of a subdivision into those different amounts?

A. Yes, sir.

90 Q. Did you get that out of your head altogether?
A. Very likely.

Q. When you delivered these policies to Runk, you agreed with the insurance company to see them whole on the premiums, did you not?

A. When I first delivered them?

Q. When you got them from them.

A. If I placed them; yes, sir.

Q. And you took from Runk part cash and part store orders on Darlington, Runk & Co., did you not?

A. When I finally placed them; yes, sir.

Q. And when Runk died there were nearly \$1,800 due on these store orders and Joseph G. Darlington cashed them; is that not so?

A. I don't think there were.

Q. How much do you think there were?

A. My impression is that there was a very small amount due at that time.

Q. Runk did settle with you part cash and part store orders, did he not?

A. Yes, sir.

Q. You were to make good the whole amount to the insurance company in cash?

A. Yes, sir.

Q. There were some of these store orders on Darlington, Runk & Company which paid this insurance which were not cashed at the time of Runk's death, were there not?

A. There was some balance I think due me.

Q. And although they had not been accepted by Darlington, Runk & Company before Runk's death, Joseph G. Darlington made the unpaid balance good, did he not?

A. The unpaid balance was paid by them. It was recognized.

Q. Tell us how much that was.

A. I couldn't tell you. I don't know.

Q. Try and give us your best judgment of the amount.

A. I haven't the slightest idea now.

Q. It has not been such a terrible long time ago.

A. I buy considerable at Darlington, Runk & Company's and Joseph G. Darlington's, and I can't tell you how much my bill was at that time or how much I bought since then. It is not possible for me to recollect.

Q. This application which was signed by Mr. Runk was an application that was sent on to New York before the policies were issued, was it not?

A. Yes, sir.

Q. And stayed necessarily in New York?

A. Yes, sir.

Q. It never came back here?

A. No, sir.

91 Q. And the policies, seven in number, were issued in accordance with this application signed by Mr. Runk and to the extent of \$95,000, were they not?

A. Yes, sir.

Q. When was it that Runk asked that the premiums should be paid, one-half annually in November, 1892, and thereafter annually in May? Was that before or after the policies came back?

A. I don't remember.

Q. I see here written in this application that antedated, of course, the policies, the terms on the policy applied for are "To be payable annually for the term." That is printed, and then, "From November 10, with privilege of paying one-half annually in November, 1892, and thereafter annually in May." It was discussed between yourself and Runk before that application was sent that that arrangement should be made, was it not?

A. I knew that there was a talk of that kind. When that talk was I don't recall at all.

Q. The time is embodied in this application that was signed on the 6th of November and sent to New York and stayed, is it not?

A. Yes, sir; but that application was filled up afterwards.

Q. Do you mean to say you did not have a talk before this application ever went to New York upon the subject with Runk on having a different time of paying his premiums?

A. I mean to say that application was signed in blank.

Q. The whole of it in blank?

A. Yes, sir.

Q. Do you mean to say the whole of that application was signed in blank?

A. Yes, sir.

Q. Who filled it up?

A. William H. Lambert.

Q. Did you not fill it up partly?

A. No, sir, I don't think so. If you will let me see I will tell you. (Looking at application.) I don't think my handwriting is on it at all. I think it is all William H. Lambert's.

By the COURT:

Q. When you say it was delivered in blank, do you mean it was blank in all respects except as to his name?

A. I mean that Mr. Runk signed that application in blank and Mr. Lambert filled it up afterwards.

Q. You mean that the filling up was done after the signatures?

A. Yes, sir.

Q. The answers to the questions?

A. Yes, sir; from information that I had.

By Mr. JOHNSON:

Q. Were any of these blanks filled up after these policies came back from New York?

92 A. I never saw it after I gave it to Mr. Lambert.

Q. Where did Lambert get the information from that Runk wanted to pay in this way, annually after November, 1892.

A. From what I gave him.

Q. Then Runk did discuss that with you before the application went, did he?

A. I don't know just when he discussed it; I say he did at sometime discuss that with me. I remember it always.

Q. Do you mean to say you were discussing with this man for a special time of paying a premium on a policy of \$10,000 or \$15,000?

A. It is very common when men take insurance.

Q. That is not the question. (Question read.) How on earth did Mr. Lambert, if he did not get it from you or from Mr. Runk, know that he wanted \$20,000 in the name of his wife?

A. He got it from me.

Q. Then Runk discussed that with you, did he?

A. I said I felt that part of it should be in his wife. Just what passed between Mr. Runk and I at each interview it is impossible for me at this time to say.

Q. Do you mean to say that Lambert knew how this \$95,000 was to be divided except as he was told by you, between the wife and Runk?

A. No, sir; I told him how to fill it up.

Q. Who told you? Runk, of course, did he not?

A. Certainly Mr. Runk told me.

Q. You got from Runk the information to fix it up in this way, did you?

A. To cut it up into these policies?

Q. Yes.

A. Not necessarily.

Q. I did not ask what is necessary; I asked what occurred.

A. I mean to say that I cannot recollect at this time what passed at each interview with Mr. Runk.

Q. I am not getting at interviews; I am getting at what preceded this application. Here is an application to which Runk's signature is providing that there shall be a \$20,000 policy "in favor of Evelyn T. B. Runk, or, if not living, to my estate," and a policy comes back within two days in that way. I want you to tell this jury if you had only been talking to Runk of \$10,000 or \$15,000 policy, how on earth that amount got into the application?

A. I can tell you what I know of the whole matter.

Q. Answer that question.

A. I cannot answer that.

Q. You can answer it as fully as you please to answer it.

A. I cannot answer it in that way.

Q. How did Lambert know that Mr. Runk's wife's name was Evelyn T. B., Eveyln being spelled "y-l-n"?

A. Mr. Runk gave it to me.

93 Q. How much did Runk tell you he wanted in his wife's name?

A. I don't remember.

Q. Will you say he did not tell you the \$20,000 that was put in?

A. I don't remember at this time.

Q. You said a little while ago you only talked of a total of \$10,000 or \$15,000, and now you do not know but what he did tell you \$20,000 for his wife.

A. I know that he did not talk a very large amount at the first.

Q. I want to know by whose direction there was written in to that application "\$20,000 to be in favor of Evelyn T. B. Runk if living; if not, my estate"?

A. I got certain information from Mr. Runk, and that information I gave to Mr. Lambert.

Q. Was that information information you got from Mr. Runk?

A. Whatever information I gave Mr. Lambert I got from Mr. Runk.

Q. I asked you whether the information that the policy to the extent of \$20,000 was to be in his wife's name came from Runk?

A. I don't know the exact amount that he gave me.

Q. Now you say this application was left entirely in blank. Will you please tell me where the information came from that there were \$315,000 of insurance in other companies, New York, \$100,000; North Western, \$50,000; Penn, \$30,000; Provident, \$20,000; Etna, \$15,000; Mutual Benefit, \$10,000; State Mutual, \$20,000; Connecticut Mutual, \$10,000; Equitable, \$15,000; New England, \$20,000; Travelers, \$5,000; Commercial Alliance, \$10,000, and Life Union, \$5,000?

A. I took the information from the last application of the New York Life, and asked Mr. Runk if he had taken any since he took the New York Life.

Q. What was the date of the last application to the New York Life?

A. I think it was in 1889.

Q. Were not some of that \$315,000 issued after 1889?

A. I don't know.

Q. Will you say that you got from the application to the New York Life that information?

A. I say I got the information on the last application to the New York Life. And I asked Mr. Runk if he had taken any since then, and he gave me the other insurance, and I put it in that list, and gave it to Mr. Lambert.

Q. Did you have before you in November, 1891, the application to the New York Life?

A. A copy of it; yes, sir.

Q. Where did you get it from?

A. In the office in Philadelphia.

Q. You took it to Runk?

A. I took just the information that I wanted to Mr. Runk.

Q. Did you take that to him before this application was 94 signed?

A. At the time the application was signed I got the information from him.

Q. Where did you get the information from that is filled in here

that Runk was born on the 11th of October, 1846, in Huntington county, New Jersey?

A. The application to the New York Life.

Q. Did you take that to him?

A. No, sir.

Q. When did you get that information, before the application was signed?

A. I had had that for a long time.

Q. How many policies did you show Runk do you say the first time you showed him any?

A. I think, to the best of my knowledge, I showed him probably from twenty to forty thousand.

Q. Do you have a positive recollection on that subject?

A. As far as I can recollect, I believe that was the case.

Q. Do you have any recollection that you showed him from twenty to forty thousand?

A. It is my general belief that is what I showed him at that time.

C. You have some memory that you showed him that?

A. That is what I believe I showed him.

Q. Was his wife's \$20,000 amongst them?

A. I don't know.

Q. Try and recall whether included in it was the wife's \$20,000?

A. It is not possible now for me to remember it.

Q. You had nothing to do with the John Hancock \$20,000, had you?

A. At the time we placed the Home Life the John Hancock was written.

Q. Had you anything to do with that?

A. Yes, sir.

Q. Did you negotiate it?

A. I say yes.

Q. I do not like that hesitating way of "I say yes." What made you hesitate and then what made you say yes? What was in your mind that made you do it that way?

A. Simply because I have not the distinct recollection of where the John Hancock application was written and the day it was written. I think it was written at the same time as the Home Life.

Q. Did you get part of the premium or any commission?

A. Yes, sir.

Q. How much commission did you get in the John Hancock, and who paid it?

A. Mr. Harmar.

Q. How much?

A. I don't remember.

95 By the COURT:

Q. Did this application contain a provision that the answers to the various questions had been read over to the applicant? I mean the application which you took from him which you say was in

blank. Did it contain a provision that the answers should be read over to him after they had been written out?

A. Yes, sir.

Q. You took his signature to that statement while the answers were not yet answered at all and handed it over to Mr. Lambert?

A. I said I had the information—

Q. I want to know the fact, whether you did that or not?

A. Yes, sir; I gave it to Mr. Lambert to fill up.

Q. That is, you had him sign a statement that the answers to the various questions that he was called upon to answer as preliminary to taking his policy, and that constituted the condition on which the policy issued, you had him sign that while not a question had been answered?

A. Yes, sir. He said "Pierce, you have the information."

Redirect examination.

By Mr. BISPHAM:

Q. I think you said that the premium was paid to you by Mr. Runk partly in cash and partly in store orders. Is that so?

A. Yes, sir.

Q. And you said also that some of the store orders were not paid until after Mr. Runk's death.

A. I had a running account with him, and I think there was some balance due me at that time.

Q. Do you mean paid to you or paid to the company? Had the company anything to do with the store orders?

A. No, sir.

Q. Who settled with the company?

A. I paid Major Lambert the net amount due on the policies after deducting my commission.

Q. When did you make that payment?

A. I think it was in January. Not before the latter part of December or the early part of January. I think that was the time.

Q. What were your commissions that you got from this company?

A. I got sixty-five per cent. and \$6 a thousand for placing the whole amount. I would not have got quite as large a bonus if he had not placed it all.

Q. You had known Mr. Runk, as you have told us, for a number of years, and had got him to take policies in the New York Life. Had you filled up any of the applications for him for the policies to the New York Life?

A. I think the first time I ever wrote him was for the New York Life, and undoubtedly I filled up the application in his presence.

96 Q. How did you fill it up; who gave you the information?

A. I asked him the questions, and he answered them.

Q. And I understand you to say, that when the application for

the present policies, the policies in suit, was signed, you had a copy of an application which had been made to the New York Life?

A. Yes, sir.

Q. Had you that with you in your interview with Mr. Runk?

A. I don't believe I had it. I think I had it in my office.

Q. Did you have any conversation with Mr. Runk in regard to the division of this insurance?

A. I think there is no doubt but the first policies he said "make them \$15,000 or \$20,000," something of that kind, but as to making them all of that general line, I don't think he gave me that full information as to the full amount.

Q. What did Mr. Runk say at the last conversation you had with him before these policies were issued. Do you recollect?

A. No.

Q. Did you have any additional talk about the amount of the policies; as to taking the additional amount? I want to know whether there was any additional amount named in your last conversation before these policies were actually handed him?

A. I think very likely before I took out his last application I probably talked some larger amount.

JOSEPH G. DARLINGTON, having been recalled, was examined as follows:

By Mr. BISPHAM:

Q. You are of the late firm of Darlington, Runk & Co., of whom Mr. Runk was a partner?

A. Yes, sir.

Q. How long had you been associated in business with Mr. Runk?

A. Fourteen years on the first day of August, 1892.

Q. At the time of his death you were carrying on business under articles of copartnership which were signed when?

A. Originally in 1878.

Q. You had been carrying on business under substantially the same articles of copartnership since 1878?

A. Yes, sir.

Q. The amount of capital, as you have already testified, which Mr. Runk was to keep up, was one hundred thousand dollars?

A. \$100,000; yes, sir.

Q. Did you go abroad in the summer of 1892?

A. I did.

Q. When?

A. On the 6th day of July.

Q. When did you return?

A. On the 28th day of September.

97 Q. Did you advise Mr. Runk that you were to return on that day?

A. I did.

Q. How?

A. ~~Not~~ by letter and by cable.

Q. Did you receive any acknowledgment from him?

A. No. I received a cable from him.

Q. You returned home on the 28th of September?

A. I did.

Q. Had you arranged with Mr. Runk that he should meet you in New York?

A. I had not.

Q. You were in the habit of going abroad?

A. Regularly.

Q. You went abroad, I suppose, on business, did you not?

A. On business.

Q. For the purchase of goods?

A. Yes, sir.

Q. Had Mr. Runk any habit as to meeting you on your return?

A. He always met me at the Broad Street station.

Q. When you returned in September, 1892, did Mr. Runk meet you?

A. He did at the Broad Street station.

Q. What was Mr. Runk's appearance and condition when he met you?

A. Can I tell it just from the commencement?

Q. Go on and tell the whole story to the jury.

A. I arrived at Broad Street station on Wednesday evening about seven o'clock and was surprised at not seeing Mr. Runk on the platform where he always had met me. William Nice was on the platform with one of Mr. Runk's boys to meet me. We passed along the platform and passed through the lobby railing, and when we were in the vestibule of the station William Nice turned to me and said, "Mr. Darlington, there is Mr. Runk." Up to that time I had not noticed him. I looked around and saw Mr. Runk and stepped forward toward him, and, as I stepped forwards towards him, he stepped back and continued stepping back until he reached the wall of the depot. He had a strange kind of a look and immediately commenced to talk to me about the annoyance he had had all summer regarding the finishing of the Broad Street station; the trains had been running on very miserable time. That was about the burden of his complaint. I was in a hurry to take the train for Haverford, and Mr. Runk went with me, and, if my recollection serves me properly, he said, "Let us sit down here," which was the last seat in the last car, which we did. Nothing important passed, for I was anxious to get home. I left him at Haverford station. I did not see him again that evening.

Q. Do you recollect what day of the week that was?

A. Wednesday evening.

98 Q. When did you next see Mr. Runk?

A. On Thursday morning about quarter past nine o'clock.

Q. That was at your store?

A. At the store in his office.

Q. Did you have any conversation with him on that day?

A. I asked him if everything was all right, and he said it was. I looked over the memorandum books, which always indicate the con-

dition of affairs, and they were apparently all perfectly correct. I then went about my business, which was entirely different in the business from Mr. Runk's, and I saw very little more of him that day, except just casually.

Q. When was it that you first had any intimation that anything had been going wrong from your examination of the affairs?

A. Possibly on Friday morning I noticed something that I did not just understand. I had no intimation or no idea of my mind that there was anything wrong, but I noticed something that required an explanation, and that explanation was not given very satisfactorily, and I passed it over, and it did not make much impression on my mind, because I was very busy.

Q. Explanation from whom?

A. From Mr. Runk. I left him on Friday morning, and did not see much of him, and Saturday I saw him and asked him again and referred to this matter and the explanation was still more unsatisfactory. That is, there was nothing whatever said about it. All this time there was no impression on my mind or thought that Mr. Runk had done anything out of the way whatever. No such impression whatever.

Q. What was the matter about which you inquired of Mr. Runk?

A. The matter that I noticed, that it was the time of the year when we used a great deal of money always taking goods out of bond, and we used a great deal of money, and one of the banks, who always loaned us money at that season of the year I noticed had not done so, and he had not obtained it, and I asked him why, and he could not give me a satisfactory explanation except that the bank was poor. It struck me as unusual, but there was no doubt in my mind whatever but what the statement was perfectly correct. That same conversation occurred on Friday and on Saturday. During those days I saw very little of Mr. Runk because he was an office man, and I was in the business and naturally very busy, just coming home from Europe.

On Monday morning I referred to the matter again, and I told him I wanted him to go to the bank and tell me whether he was going to get that money, because if he was not I would try to have it as we wanted it right away for insurance duties. He returned to the store about eleven or twelve o'clock. I was then busy on one of the upper floors of the building, and he came to me and said he wanted to see me. I told him to go over in my office, and I would be there in a moment. I went over and Mr. Runk was sitting by my desk looking as I have never seen a man look before or since.

Q. Describe him.

99 A. I cannot describe his color or his whole expression because it was something I had never seen before. The man was absolutely vacant. He looked green. I do not know how to describe it. I looked at the man. I would like to say right here that Mr. Runk and I never had a word of difference during fourteen years' daily connection. He had my absolute confidence, and I think I had his. I looked at him and said, "Well, William, what is it?" He said, "Joseph, I have done very wrong." I said,

"What have you done?" He said, "Well, I am involved." I said, "How much?" He said, "Ten thousand dollars." I said, "Is that all?" He said, "That is all." I turned to him and said, "Now, William, I would rather you would tell me the truth. If you have ruined me while I was in Europe, I want to know it, because I would rather know it, and we will straighten things out, and I am perfectly able to commence this business over again, but I want to know it." His answer was, "As true as there is a God in heaven that is the truth." The whole sorrow seemed to be that he had lost my confidence, and I never would believe in him, and I would not keep him there, and we had spent fourteen years of happy life together, and that seemed to be his burden. The man was an absolute wreck, so far as any judgment could be formed of a man. This burden was upon him. I did not talk long about it. We were just as calm as two men could talk. There were no harsh words between us, no angry words of any description. On Tuesday morning I returned to the matter again, and asked him if that was everything, and he said it was. My office was in a different part of the building, where I always went first in the morning and immediately went to Mr. Runk's office downstairs. On Tuesday I went to the office again, as my custom, and we did not chat much about it, but later in the day I had another conversation with him and he reiterated exactly what passed the day before. He seemed to be quite a different man from Mr. Runk. On Wednesday we had a talk about one o'clock.

Q. Did anything further pass between Mr. Runk and yourself on Tuesday?

A. Nothing but on the general subject.

Q. Tell us what was said by him.

A. Just the same as on Monday, that this was everything. I asked him again, and repeated the question, if he had told me the truth, and he said he had.

Q. Had done what?

A. That he had altered a book which involved him in ten thousand dollars. That was the whole thing.

Q. Did he mention that alteration of the bank book on Monday?

A. He said he was involved, and I wanted to know how he was involved, and he said he had altered a figure in the bank book. I said, "What do you mean?" He said, "I have altered the deposit book." I said, "Have you altered the cash book?" He said "No. There is not a scratch of a pen in any book of the firm that has been improperly put there, nor has there been anything done or interfered with in any way with the firm's books," which 100 afterwards proved to be absolutely true. He said, "I have altered the deposit book to the amount of ten thousand dollars." I said, "What in the world did you do that for?" He said, "I don't know why I did it." My reply to him was, "If you were stupid enough to sit down and alter a deposit book, I do not see that you did yourself any good or did the bank any harm. It is the most foolish thing I ever heard of a man doing." He said, "I

think so, too. I think so, too. I think it was foolish, but I did it, and that is what I have done."

Q. This was on Monday?

A. That was on Monday. That was the first intimation I had.

By the COURT:

Q. Did you look at the bank book?

A. No, sir. I hadn't the bank book. I asked him, "Where is the bank book?" He said, "It is down at the bank." He said, "When bank books are full they keep the books." I said, "I never heard of that. I never heard of such a thing as that in my life. What does the bank want with a lot of old bank deposit books? I do not know where they would keep them." I said, "I want you to go down and call up the bank and tell them I am coming right down there." That was about five minutes to one. He went down and called up the bank and the answer came back that the president was just leaving the bank, but he would be very glad to see me in the morning. I went there on Tuesday morning and I walked in and I told the president I supposed he knew what I was there for, and he said he did. He said he was perfectly aware of the fact that I was in entire ignorance of this, because it happened while I was in Europe. I asked him if he would show me the book, which he did, and it was simply altering the balance. I forgot what the figures were. If it was \$20,000 it was altered to \$30,000, or if it was ten it was altered to twenty, increasing the balance in our favor, for the purpose of allowing our book-keeper to keep his cash book right, because his cash book called for that much *much* money in the bank, and, therefore, Mr. Runk had to alter this balance for the book-keeper to check that book. The money had been deposited and drawn out without the knowledge of the book-keeper. If the books showed a balance of \$20,000, the bank actually only had in it \$10,000, and Mr. Runk was obliged to alter that ten thousand to twenty thousand to make the book-keeper straight.

By M^r. BISPHAM:

Q. About what date was this alteration of the bank book?

A. That I am unable to say. I can tell you when it was discovered in the bank, but when it was made I do not know.

Q. It was some time, as I understand, during your absence in Europe?

A. I am under that impression. Whether it was actually altered while I was in Europe or not, it was discovered while I was in Europe.

Q. Was it an alteration of a comparatively recent date?

A. It was comparatively recent.

Q. Was it in 1892?

101 A. Oh, I should say so, but I am not clear when it was. I only know it was discovered at the end of June.

Q. That conversation took place on Monday?

A. On Monday and continued on Tuesday.

Q. You visited the bank on Tuesday?

A. Yes, sir.

Q. Was your conversation with Mr. Runk on Tuesday before or after your visit to the bank?

A. Both.

Q. Mr. Runk alluded to this circumstance?

A. He did. He alluded to that alteration in the bank account.

By the COURT:

Q. Was that the only thing?

A. That was all. The only question he ever acknowledged to me was the alteration of the bank account in the deposit book.

By Mr. BISPHAM:

Q. You had a talk with Mr. Runk before you went down to the bank and then you visited the bank and then you came back. Please state to the jury fully what passed between Mr. Runk and yourself after you returned from the bank on Tuesday morning and saw him.

A. When I came back from the bank I called Mr. Runk aside, and said, "William, you have not told me the truth about this." He said, "Why?" I said, "You altered the balance more than once. You altered the book more than once." It was always the same amount, but there was a difference of ten thousand dollars or something like that. He says, "Is that so?" perfectly dazed. I said, "Yes." He said, "I didn't know anything about it. I must have forgotten that." He said, "I had no idea of deceiving you, but I must have forgotten it." The man was kind of dazed.

Q. What do you mean by "dazed"?

A. He did not seem to be able to talk coherently. He couldn't talk coherently. He couldn't talk sensibly. He could not give me any practical or sensible answer in the matter. So much so that the conversation was a very short one. I was under deep feeling about the matter.

By the COURT:

Q. How long was this before his death?

A. The first intimation I had was on the Monday morning preceding his death, which was on Wednesday, and we are at Tuesday now, and he died on Wednesday evening.

By Mr. BISPHAM:

Q. Have you got through with your conversation on Monday and Tuesday?

A. Yes, sir.

Q. What sort of a business man was Mr. Runk prior to this time? Was he a bright man or a dull man.

102 A. I should not call him either a bright man or a dull man. I always looked upon Mr. Runk as a man of absolute integrity, and in that respect he was valuable to me.

Q. When you were talking to him about matters of business was he a man who understood you?

A. He did and he did not. He was a man you could not talk business to.

Q. Did you make any appointment with him on Tuesday to meet him on Wednesday?

A. No. From the time that I first had the intimation of this, it was not the amount that impressed me, because we did not enter into it, but it was the fact of the deception, and during Monday and Tuesday I naturally was very much distressed, and we had very little conversation together. I had been turning the matter all over in my mind how to adjust it. It had all been arranged with the bank. I got it all fixed at once. On Wednesday morning I had arrived at the determination in my mind what was to be done. I made an arrangement to meet Mr. Runk, as near as I can remember, about one o'clock, when we had a talk. He came in and sat down and hadn't anything to say. He sat down, and as near as I can remember the conversation took this form: I said "William, I have thought this matter all over, and we are just in the beginning of a season's business. Our minds must be entirely free for this business. This matter must now be dismissed. As to the final solution of it, that is a matter for the future." I said, "There are several matters I would like to speak about however that I have done wrong in not speaking about before. That is, you have too much on your mind for a business man. You are excited and nervous, running to the telephone, I never can have five minutes consecutive conversation with you at all, and I think you are making a very great mistake. If you want to be a useful business man, you have only time for one thing."

We then spoke about our boys, as to their future, and we had as pleasant and agreeable a conversation as two men could have, except I was doing all the talking, Mr. Runk merely assenting and bobbing his head and agreeing to whatever I said. I think the only thing he said was, "Joseph, you are perfectly correct in what you have said, and whatever you say shall be done," and "You are perfectly right, and I will agree to everything. Everything shall be exactly as you want it, and you will not have any more cause to find fault with me."

Q. What was it you wanted him to do?

A. I wanted him to give more attention to his business and not be so nervous and jumping around so much. He was always excitable. It had been growing on him. I said, "I do not know what your outside arrangements are, but I can speak personally, and I find my time fully occupied attending to the business, and I do not see how you can do any more." When the conversation closed, it did not last over half an hour, I remember perfectly well, because it was the time I go to lunch. At half past one I go to lunch, and I took out my watch and said, "I am going to lunch, William. I will see you when I come back this afternoon." He said, "All right." I never saw Mr. Runk alive again.

103 Q. You came back to the store that afternoon?

A. I did about half past two o'clock and sent for Mr. Runk at three o'clock, as was our custom, not to continue the conversation,

but simply to see him. That was all. He did not come back, and I waited until my time to go home, five o'clock, and they sent me word back that Mr. Runk had not returned.

Q. What was Runk's appearance and manner at this conversation on Wednesday morning?

A. Just as it had been on Monday and Tuesday, perfectly vacant; blank.

Q. How did that compare with his ordinary appearance and manner previously?

A. Quite different. Mr. Runk was naturally a buoyant, happy disposition. He was a congenial man in every way.

Q. That was the last time you saw him alive?

A. Yes, sir.

Q. At the time you had this conversation with him were you aware of the drafts which had been made upon his contribution to the capital?

A. Absolutely not.

Q. Was anything said in reference to making an examination of the book- or the affairs of the firm?

A. No.

Q. Was anything said upon the subject of his drawing money from the firm?

A. Except Mr. Runk was in the habit of having money that I noticed put on memorandum, which I called his attention to and told him that I could not allow it; that I knew it had existed, never any great amount, but it was larger when I came home, and I told him that was not right. That if he wanted money he should come and ask for it, and if it was convenient to let him have it he should have it, but I did not want any money put on memorandum, and I wanted that money immediately charged against his account. His answer was that was perfectly correct and that it should be done.

Q. Was there any provision in the articles of partnership that Mr. Runk was entitled to draw?

A. He was to draw so much a month and had a right to draw provided his capital was not interfered with or reduced below \$100,000; that must always remain intact.

Q. How much per month was he entitled to draw?

A. For his living expenses, I think, about \$700. Possibly six hundred.

Q. You discovered these draft on the capital after Mr. Runk's death?

A. I did.

Q. Did you ascertain at what time these drafts upon the capital began?

104 A. Only approximately. I should say they covered a period of two months.

Q. Within two months prior to his death?

A. Yes, sir.

By the COURT:

Q. They commenced within two months of his death?

A. From all the evidence I could find, I suppose they went back probably as far as March or April. I have not the exact date, but it was all in that season.

By Mr. BISPHAM :

Q. You went away early in the summer, did you not ?
 A. On the 6th of July.
 Q. Mr. Runk remained at home ?
 A. Yes, sir.
 Q. For what purpose ?
 A. He always remained at home to look after the business. He had entire charge of the business.
 Q. The whole matter rested on him ?
 A. Yes, sir.
 Q. Did you ever notice anything in Mr. Runk's condition in regard to the treatment of the employés in the establishment after your return home ?
 A. None whatever.
 Q. Before you went away ?
 A. No, sir.
 Q. Mr. Runk lived at St. David's ?
 A. That was where he lived in the summer time.

Cross-examination.

By Mr. JOHNSON :

Q. A large part of his capital had been loaned to him by his aunt, Mrs. Barcroft ?
 A. So I understood.
 Q. Under the articles, he was entitled to draw \$700 a month ?
 A. Six or seven hundred dollars I think it was.
 Q. And about what style of living was he indulging in ? He had a country place and kept horses and carriages ?
 A. Yes, sir.
 Q. And had his children at college ?
 A. He had one son at college.
 Q. About what were his monthly expenditures ?
 A. I do not know.
 Q. You can give us an idea ?
 A. No; I have no idea.
 Q. You visited at his house ?
 105 A. Yes, sir.
 Q. You can give the jury no idea of the probable expense ?
 A. A very plain home. Very simple and very plain.
 Q. Do you think his expenses were much less than seven or eight hundred dollars a month ?
 A. I have no right to know anything about his expenses.
 Q. You have no idea whatever ?
 A. No, sir.
 Q. Have you any idea where he was going to pay \$20,000 a year insurance premiums ?

A. I didn't know anything about it.

Q. If, therefore, in October, 1891, he was paying about \$12,000 of premiums and took on an additional load of eight or nine thousand dollars more, you know of no source from which he was going to get the revenue to pay that, do you?

A. I knew nothing about his expenditures for life insurance.

Q. How about these store orders? How much was the amount of the store orders you settled with Pierce after Runk's death?

A. They were not store orders. There was one order. The amount I forgot. I did not settle with them. Mr. Runk's estate settled it. I did not pay it.

Q. He says you paid it. He says he saw you. He was asked, "Did you have any conversation with Mr. Darlington about this order?

A. After the death; yes.

Q. What was the conversation?

A. He simply told me to send them in and he would fix my account.

Q. How did he know you had them?

A. I told him I had them.

Q. What amount did you tell him you had?

A. My bill had been running along for some time and I had not settled the bill for months, it was something about seventeen or eighteen hundred dollars."

Q. Do you recollect about that?

A. That is correct.

Q. You did have a talk with him?

A. I did not understand you.

Q. I thought you said the estate settled it?

A. It was settled by approval of the estate, and charged to Mr. Runk's personal account.

Q. What do you mean by that?

A. I was authorized by the counsel of the estate to charge this item against Mr. Runk's personal account.

Q. Who was the counsel of the personal estate?

A. Mr. Bispham.

Q. Who is your counsel in this matter?

A. Mr. Dale.

106 Q. And he is specially representing you here in this fight?

A. In connection with the estate.

Q. At your request? The estate did not request Mr. Dale to be here?

A. The estate; yes, sir.

Q. And not you?

A. I do not know. Mr. Dale has been my attorney from the very commencement when I came home from Europe—he was in this case.

Mr. BISPHAM: Mr. Dale is here at my request.

By Mr. JOHNSON:

Q. Do not let us have any adjectives about "vacant" or "dazed," or anything of that sort, but tell this jury anything that William M. Runk said to you that was not intelligently said. Tell us what the thing was that he said was not intelligent.

A. I cannot say that he told me anything but what was intelligent. It was more his manner. Everything he said, the words were perfectly intelligent.

Q. His manner was that he was not very free with his explanations? Is that so?

A. His manner was entirely unnatural.

Q. Have you ever seen a man before that had been found falsifying books?

A. No, sir.

Q. Was it an unnatural manner for a man who had been detected in that?

A. I had not detected him in that.

Q. He had been detected in having falsified the book, had he not?

A. Not to my knowledge then. I had no knowledge of that.

Q. What are you referring to? I am referring to these conversations Saturday, Monday, Tuesday and Wednesday. Had he not been detected then?

A. No, sir; he had not.

Q. What did you mean by saying it had been found out in June by the bank or at the bank?

A. That he altered the bank balance.

Q. When was it found out by the bank?

A. So far as I know, the end of June.

Q. So that the thing that Runk volunteered to you was something that the bank itself had found out? Is not that so?

A. That is so.

Q. And, therefore, when he came to make a disclosure to you he limited the amount of the disclosure to what had been actually found out by the bank itself antecedently, did he not?

A. Yes, sir. That is so.

Mr. Johnson requested the witness to produce the report of the expert on the accounts of the firm showing when these overdrafts were made.

107 Q. You know you charged up against him \$84,000, did you not?

A. \$86,000.

Q. Do you mean to say that the whole \$86,000 had been spent by Runk between March, 1892, and his decease?

A. From all the evidence. I do not know when it was spent. All the evidence I had of checks went back to either March or April, or something like that. Possibly to the last of February. I had nothing to go by but the checks.

Q. Did the checks aggregate \$86,000 that went back?

A. Eighty-five or eighty-six thousand dollars I think. The checks went back to February.

Q. Did you know antecedently to that time?

A. We did not.

Q. Then you did not examine to see whether that was not a keeping up of an old thing?

A. We did not go antecedently to that.

Q. All you wanted to see was to find out what the aggregate was at the time of his death, did you not?

A. That was it.

Q. You made no effort to find out whether that did not commence antecedently to March, 1892, did you?

A. No.

Q. Because this falsification in the deposit had been repeated several times, had it not?

A. Several times during that season.

Q. Therefore, you do not want the jury to understand you as saying that you are prepared to say that it was only after March, 1892, that there was a commencement of the \$86,000 of withdrawals, but simply that you did not look to see whether there was an antecedent history of withdrawals?

A. I did not look, nor did I know anything about it.

Q. How did you learn that the bank had found out in June, 1892, that there had been a falsification of ten thousand dollars in the deposit?

A. The bank told me.

Q. Before Runk spoke to you?

I went to the bank and had it verified.

Q. Then what he told you was exactly correct?

A. Correct, except that he had altered it more than once.

Q. You found out from the bank there had been an alteration?

A. I did.

Q. And then when you found out from the bank that he had altered it more than once, you told him that thing?

A. I did.

Q. And he looked a little dazed, and admitted that he had? Is that so?

108 A. He said he did not know that he had. He had forgotten all about it. He afterwards remembered it.

Q. You went along step by step, and as you found it out he would admit it?

A. He admitted it.

Q. When you found out some more he said, as in this case, well, he didn't know how it happened, or something of that sort?

A. That is the only thing I found out.

Q. Of course, while he had a nominal capital of \$100,000, or perhaps a little more, against which were carried these \$86,000, that was got at by carrying the stock at more than it could realize, was it not?

A. No; I do not understand what you mean by the word "realize."

Q. "Realize" in realization at a time when the \$86,000 had been raised. Suppose you had said to him at any time, "There is but \$14,000 to your credit. We want to ascertain what your interest really is. There is to your credit, by carrying \$640,000 worth of stock at that value, so much." Could you have obtained, or could he have obtained for his interest that \$640,000, or whatever the stock was carried at?

A. That depended entirely upon what kind of a settlement was made.

Q. You made a settlement under articles that obliged you to take no advantage of him, and, I take it therefore, you made as good a settlement as he was entitled to, did you not, for him?

A. I made a good settlement for him.

Q. So that when you came to make the best settlement you could for him with regard to his interest, those six hundred and forty-odd thousand dollars were worth less by about two hundred and ten thousand dollars than they were carried for to ascertain him to have any interest? Is not that so?

A. That is a way of stating it; yes, sir.

Q. So that, although after you had charged up the \$86,000 there was something to his credit nominally, that was by carrying the stock at a higher value by thirty per cent. than was its fair value?

A. Not under ordinary circumstances. Under normal conditions the stock was worth all that had been carried out.

Q. You were going to carry on that business again?

A. Yes, sir.

Q. It was worth as much to you to take it as to anybody else?

A. It has another factor in it.

Q. What was the other factor?

A. The other factor was that the estate of Mr. Runk was relieved immediately of all responsibility regarding any obligations of Darlington, Runk & Co., which I immediately assumed.

Q. You were obliged to assume that responsibility anyhow. It was a general partnership and you were liable for the whole as well as the part, were you not? I want to give you the credit for paying for that stock which you were to carry and to use, its supposed fair, full value. Assuming that you paid for it its fair, full value, 109 and that these \$210,000 you clipped off from it were fairly clipped off, there was not really any valuation to his credit, that which appeared, after the \$86,000 was charged against it, was there?

A. I cannot answer that way.

Q. Answer it in your own way.

A. That stock was settled under the peculiar condition of affairs.

Q. How peculiar, excepting that you got it? What else was there peculiar? You were under an obligation to take it in a way not to take advantage of him. How else was it peculiar?

A. The peculiarity was simply that the estate wanted a settlement and there were only two ways of selling out; either selling out at

public sale, or for the surviving partner to take it, and had it been sold out at public sale it would not have been nearly as advantageous as if I took it.

Q. There was no way by which his interest could have realized anything like what stood nominally to its credit?

A. Not at forced sale.

Q. Some of this stock which you took thirty per cent. off had just been bought and not delivered; it was new fall stock?

A. It had all been delivered.

Q. Did you not take at thirty per cent. discount a great deal of stock that you had bought in Europe on that trip that you returned from on the 28th of September?

A. Yes, sir. But not a large amount in comparison to the bulk of the stock.

Q. You were making all your fall purchases in Europe?

A. Not by a great deal.

Q. About how much do you think of those \$600,000 was stock which had been bought in Europe by you on that trip for the fall business?

A. I can't say.

Q. You said he was running to the telephone; his manner had changed in that respect. Was he not running to the telephone to give directions to the stock brokers?

A. I do not know.

Q. You have heard of these five stock-brokering accounts that he had, have you not?

A. Yes, sir.

Q. That would account for some pretty lively telephoning, would it not?

A. I think it would.

Q. And account for a man being a little nervous, too, would it not?

A. I think so.

Mr. Bispham produced statement called for by Mr. Johnson.

Redirect examination.

By Mr. BISPHAM:

Q. You have been cross-examined by Mr. Johnson on the subject of your settlement with the Runk estate. Tell me whether, 110 in your judgment as a business man, that was or was not the best settlement that could have been made for the interest of Mr. Runk's executors.

A. I think it was decidedly in favor of the estate.

Q. What was the alternative?

A. Public sale.

Q. What, in your judgment as a man of business, would that have resulted in?

A. It would not have brought within twenty per cent. of what I gave him. Or no other merchandise stock.

By the COURT:

Q. Was it worth any more to you ?
A. It was to me to carry on the business.
Q. Was it worth any more to you than what you paid for it ?
A. Not a dollar. I did not think it was worth as much.

By Mr. BISPHAM:

Q. That settlement was made on February 1st, 1893 ?
A. I think so. Whatever that date is.
Q. At that time how much percentage of the fall stock had been worked off and sold ?
A. I could hardly tell that.

ARTHUR B. HAMIL, having been duly sworn, was examined as follows:

By Mr. BISPHAM:

Q. You are now in the establishment of Mr. Darlington, are you not ?
A. Yes, sir.
Q. In the employ of Mr. Darlington ?
A. Yes, sir.
Q. You were in the employ of the firm of Darlington & Runk, were you not ?
A. Yes, sir.
Q. When did you first go with them ?
A. In October, 1888, I think.
Q. Whereabouts was your office or place where you did your work ? On what floor of the building ?
A. Third floor back.
Q. What were your duties in a general way ?
A. Attending to the purchases and payments.
Q. You had charge of the invoices, had you not ?
A. I didn't have charge.
Q. What had you to do with them ?
A. I examined the extensions.
Q. What do you mean by that ?
A. When the bill would come in to see that the extensions were correct.
111 Q. You had charge of the merchandise ledger, had you not ?
A. I made the entries on the ledger. I didn't have charge of it.
Q. Who had ?
A. Mr. McAvoy.
Q. You made the entries on the ledger ?
A. Yes, sir.
Q. Under Mr. McAvoy's direction ?
A. Yes, sir.
Q. What would you do after you had made up the average dates of payment for goods ?
A. I would take them to Mr. Runk.

Q. What would Mr. Runk do?

A. If they were due he would give them to me and tell me to take the discount off and return them to him again with the amount, and he would send me to Mr. Farr and tell Mr. Farr to draw the checks. Mr. Farr would draw the checks and return the slips to me, and I left them in what we call a blank receipt book.

Q. Was that a receipt book or called a remittance book?

A. That was a blank receipt book.

Q. You were familiar with the way in which Mr. Runk used to draw checks which were to be used for the payment of bills of goods consigned?

A. Yes, sir; I was.

Q. You were aware afterwards of the overdrafts on Mr. Runk's capital? The fact that he had drawn money out and used it?

A. No, sir.

Q. You knew that the checks which had been drawn were not sent?

A. I knew from the fact that it was the custom to send checks to me to mail, and I have often seen them when I went down to the office.

Q. You knew from your examination that the checks had not been sent?

A. Yes, sir.

Q. Did you make any estimate as to about what time that appropriation of moneys covered?

A. I didn't know anything about it when I first entered the office. About two years afterwards I was in a position to know then, and it had been carried on from that on, for the two years, but not of any consequence. He would draw checks and send them probably the following week or next day or so.

Q. How was it for a few months prior to his death?

A. It got quite large for a couple of months.

Q. What did it amount to roughly?

A. From \$70,000 to \$80,000.

Q. That is during the two months prior to his death this amount amounted to between \$70,000 and \$80,000?

A. Yes, sir.

112 Q. Prior to that time had there been any holding back of this amount that you were able to discover?

A. There were checks held back for two or three days or a week. Something like that. He would send checks out probably every day, but kept some back and sent some.

Q. It was in the summer of 1892 that it increased to that amount?

(Objected to as leading.)

Q. What was the aggregate of these checks during the summer of 1892 roughly?

A. I said between \$70,000 and \$80,000.

Cross-examination.

By Mr. JOHNSON:

Q. When did you ascertain that; before his death?

A. Before his death.

Q. How long before his death?

A. The checks had been held back for about two months before his death.

Q. Then you, the book-keeper of this concern, discovered two months before his death that he was holding back \$70,000 or \$80,000?

A. Oh, no, sir.

Q. How much did you discover?

A. At the time of his death it amounted to that, but he had commenced to hold it back in large amounts within two months.

Q. What amount did you discover in the two months before his death that he was holding back? How much did you then discover him to be holding back?

A. I didn't notice any at that time.

Q. When first did you notice he was holding any back?

A. He had been holding back off and on.

Q. I understood you to say that two months before his death you discovered that he was holding back checks to a large amount?

A. Yes, sir; before that they were small amounts.

Q. I want to know what amount two months before his death you discovered he was holding back?

A. I don't know what amount. I never noticed the amount. It didn't amount to anything. I should say \$5,000 or \$10,000.

Q. Not within two months before you did not discover the amount was more than \$5,000 or \$10,000?

A. No, sir.

Q. So that before his death you had not discovered that amounts had been held back to a greater amount than \$5,000 to \$10,000?

A. I should say about that. I never questioned the amount, because it was too small.

Q. That was all you knew before his death?

A. Yes, sir.

113 Q. You discovered about two months before his death he was holding back large amounts, did you?

A. He commenced to hold back large amounts two months before his death.

Q. You made a discovery two months before his death that he was holding back large amounts; is that so?

A. He began to hold back large amounts within two months before his death.

Q. How large an amount did you then discover two months before his death he was holding back?

A. I couldn't state the amount that he held back before that.

Q. How did you know it was large?

A. I do not quite understand you.

Q. Did you find out before Runk's death that he was holding back checks?

A. I did.

Q. Did you discover it two months before his death that he was holding back checks?

A. I might say I discovered two years before his death that he was holding back checks.

Q. I thought you said two months before his death you found out he was holding back large amounts; that you thought it was small before, but two months before his death you found out it was large?

A. It commenced larger; yes sir.

Q. And you have drawn a comparison between a small and large amount. I want to know about how much it was you found two months before his death. What makes you think it was large?

By the COURT:

Q. Can you not approximate the amount?

A. No, sir. I know at the time he died there was about \$70,000 or \$80,000 held back.

By Mr. JOHNSON:

Q. You found that out after he was dead?

A. I did.

Q. Did you ever make an investigation in the books to find out when that \$70,000 or \$80,000 began and the times that it accrued?

A. I should say it had grown in the two months before his death.

Q. How do you know that what was done two months before his death had not been renewals of something that had been done earlier and carried on earlier? Did you make an investigation to see that fact?

A. I don't quite see it right.

Q. Was it you found out after his death it was \$70,000 or \$80,000?

A. I knew at the time. I knew when he died.

Q. You knew before he died it was that?

114 A. Yes, sir.

Q. How long before his death had you found out it was \$70,000 or \$80,000?

A. It must have been about a week, because it was accruing every week.

Q. You found out about a week before his death that it had got to be \$70,000 or \$80,000, did you?

A. Yes, sir.

Q. Whom did you tell that to?

A. Mr. Darlington.

Q. A week before Runk's death?

A. No, sir; I didn't tell it before Runk's death.

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By the COURT:

Q. Whom did you tell it to before Runk's death when you discovered it?

A. I didn't tell it to anybody.

By Mr. JOHNSON :

Q. Why did you keep it to yourself?

A. I didn't question anything Mr. Runk did. I didn't have anything to do with the sending of checks. I merely mailed the checks.

Q. In what way did you find it out?

A. I knew from my pay statement I had in my drawer they amounted to that much, and they agreed with the checks Mr. Runk held.

Q. Did you know he was holding the checks?

A. Yes, sir.

Q. Had he told you that?

A. Yes, sir.

Q. Then did he tell you all along when he was holding checks back?

A. He could not keep it a secret from me. I had to know.

Q. Then you knew all along what he was doing?

A. Yes, sir.

Q. Did you keep any memorandum of it?

A. Nothing, only my remittance book.

Q. Then you ought to be able to tell us what it was two months before his death. You say you were keeping the memorandum of it. Keeping this memorandum, you can give us an idea what it was two months before his death?

A. I can't say what it was.

Q. You had been keeping that memorandum for two years, had you?

A. No, sir. I didn't keep any memorandum. I don't know what you mean by memorandum.

Q. What did you keep? You know that there were checks being held back, did you?

A. Yes, sir.

Q. You knew from time to time the amounts of these 115 checks that he held back necessarily. You knew the amount of each check, did you not?

A. If I looked at my book I did.

Q. You know that Jones', Smith's and Brown's checks were being held back?

A. Yes, sir.

Q. And you knew how much these checks were?

A. Yes, sir.

Q. Then you knew from time to time how much was being held back, did you not?

A. I never committed the amount to memory.

Q. How long before his death did you first begin to find that he was doing this thing; two years before his death?

A. Just in a small way it was being done then.

Q. And kept getting more and more as time accrued, it kept rolling up?

A. Yes, sir.

Q. When did you first find out, or did you, that he had also been altering the deposit balance in the bank book?

A. I didn't know anything about that.

Q. Then you do not know of the different methods he adopted of concealing what he was doing with the firm's cash?

A. No, sir.

Q. You just happened to know of these things and that they commenced two years before his death, and that they were much bigger within a few months of his death?

A. Yes, sir.

By the COURT:

Q. Did you know that there was anything irregular or improper in his holding back these checks?

A. No, sir. I didn't know anything about it. I didn't know that there was anything wrong in it.

By Mr. JOHNSON:

Q. You were book-keeper, were you not?

A. Yes, sir.

Q. You filled the amounts of the checks, did you not?

A. No, sir.

Q. Did you fill the amount on the stubs?

A. No, sir.

Q. What had you to do with the check book?

A. I had nothing to do with the check book.

Q. Then how did you know what checks were drawn?

A. Simply because I made the amount up for the check to be drawn and that was returned to me.

Q. Who would fill up the check; Runk?

116 A. Mr. Farr.

Q. Then you would make up the amount that the check was to be drawn for?

A. Yes, sir.

Q. And Mr. Farr would report to you that the check had been drawn up for that amount?

A. Yes, sir.

Q. And you would charge it against your cash, would you not, as though it had been drawn out by the customer?

A. Yes, sir.

Q. Do you want this jury to understand that you, as a book-keeper did not know that when \$70,000 or \$80,000 of checks that were charged up as paid to the creditors of the firm were not drawn that that was not irregular and improper?

A. As far as I was concerned, they were paid. I had nothing to do with mailing them.

Q. You knew they were not mailed?

A. Yes, sir; I knew that.

Q. Yet they appeared on the books as though they had been?

A. Yes, sir.

Q. Do you want this jury to understand that you, as a book-keeper, of how many years' experience?

A. I did not have any experience as a book-keeper.

Q. How long had you been in the business?

A. I was employed as a clerk for four years.

Q. Do you want the jury to understand you as saying that you did not know that it was irregular and improper, when you had given the amounts of these checks and had charged them as drawn, and that they had not been drawn, but had been held back by Mr. Runk, they appearing to have been drawn, to the tune of seventy or eighty thousand dollars, that you did not think that was improper?

A. Yes, sir.

Adjourned until Wednesday, April 3, 1895, at 10 a. m.

U. S. C. C.—Butler, J.

A. HOWARD RITTER, Executor of the Estate of William
M. Runk, Deceased,
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK.

WEDNESDAY, April 3, 1895.

Mr. Bispham, Mr. Dale, Mr. Barnes, Mr. Dickson, for plaintiff;
Mr. Johnson and Mr. Sherman, for defendant.

117 ARTHUR B. HAMILL recalled.

By Mr. BISPHAM:

Q. You said in your examination-in-chief that after you handed the bills for goods purchased by the firm to Mr. Runk, he would give them to you and tell you to take the discount off and return them to him again with the amount, and he would send you to Mr. Farr and tell Mr. Farr to draw the checks, and Mr. Farr would draw the checks and return the slips to you, and you left them in what you called the bank receipt book. What became of the slips?

A. They were held in the office for reference.

Q. Did they remain in your possession?

A. Yes, sir.

Q. Did those slips show the total bills for which Mr. Runk was to draw checks from time to time?

A. Yes, sir.

Q. In the ordinary course of business would Mr. Runk send the checks to you enclosed in letters that were mailed to the persons from whom you bought the goods?

A. It was Mr. Runk's custom to send me checks, or send for me to get them.

Q. Then, if you did not get the checks of Mr. Runk you would know by your slips how much ought to be coming to you in the way of checks?

A. Yes, sir.

Q. That is the way you made the calculation?

A. Yes, sir.

Q. How old are you?

A. Twenty-seven.

Q. You were not head book-keeper or chief book-keeper at any part of that time?

A. I don't call myself a book-keeper. I was merely a clerk.

Q. In what capacity had you been employed in the first place there?

A. To examine the extension of bills and general office work.

Mr. Bispham offers in evidence on behalf of plaintiff the deposition of George C. Thomas, taken by defendant.

(Objected to. Offer withdrawn.)

EVALINE RUNK, having been duly sworn, was examined as follows:

By Mr. BISPHAM:

Q. Where are you residing now?

A. On Eighteenth street.

Q. Is that your house?

A. It is Mrs. Barcroft's house.

Q. Mrs. Barcroft is a relation of your late husband, is she not?

A. Yes, sir; his aunt.

118 Q. When were you married to Mr. Runk?

A. In June, 1886.

Q. Mr. Runk at that time was a widower, I think?

A. Yes, sir.

Q. Had he any children by his first wife?

A. Three living.

Q. Who were they?

A. Louis, Marshal H. and Elizabeth C.

Q. Where were you living after your marriage?

A. Part of the time on Eighteenth street and part of the time at St. David's.

Q. Who owned the house at St. David's?

A. Mr. Runk.

Q. Mr. Runk was in business at the time you married him, was he?

A. Yes, sir.

Q. And remained so up to the time of his death?

A. Yes, sir.

Q. What were Mr. Runk's usual habits as to the hours he devoted to business during the last two years of his life? What time did he go in in the morning and what time did he come out in the afternoon?

A. He would go in about half past seven in the morning, and his return would be uncertain. He would sometimes come home at half past five. This was his usual hour for coming home, sometimes

later, and very occasionally he would come home earlier than that.

Q. Did he come into town in the evenings?

A. Nearly every evening through the month of May up until the 1st of July.

Q. For what purpose?

A. For the purpose of attending to his various church engagements, Sunday-school engagements, &c.

Q. He was a member of what church?

A. He was very active in the work of the Church of the Holy Apostles.

Q. That is an Episcopal church?

A. Yes, sir.

Q. Where is it?

A. Twenty-first and Christian, I think.

Q. I think you said he was active in the work of the Sunday school, &c.?

A. Very.

Q. And he would come in town nearly every evening?

A. Nearly every evening.

Q. What time would he come out again at night?

A. On the half-past nine train.

Q. When you married Mr. Runk, and for a few years after your marriage, what was Mr. Runk's disposition?

119 A. He was very genial, very cheerful, light-hearted.

Q. Was he a man of gloomy or of sanguine temperament?

A. Very sanguine temperament.

Q. What was his disposition in regard to amiability or irritability, or anything of that kind?

A. He was a very amiable man, and very even-tempered.

Q. Did you notice any change in Mr. Runk in these respects in regard to his temperament in the summer of 1892?

A. He became very excitable and irritable and nervous, unduly excited by trifles.

Q. In what way did he show his nervousness and excitability?

A. By an almost incessant motion, jerking, twitching, and he would become very angry at very small things.

Q. Where and on what occasions did you observe this motion or twitching of which you have spoken?

A. It was almost incessant. It seemed to be an impossibility for him to remain quiet.

Q. Did he sleep well?

A. He slept very heavily. It was a dead sleep. He would seem to be so exhausted at the end of the day that it was impossible for him to stay awake.

Q. Are you referring to the summer of 1892?

A. Yes, only.

Q. How did he use to sleep before that time?

A. Very comfortably and lightly, easily.

Q. What was the difference in his sleeping in the summer of 1892 and in the previous years?

A. He would be very easily aroused; a touch would arouse him, and during the summer of 1892 it would be almost an impossibility; he would lie perfectly dead and heavy, and it was almost impossible for me to arouse him.

Q. What time did you have dinner in the evening?

A. Half past six.

Q. Would Mr. Runk in the summer of 1892 go to sleep before dinner?

A. No, we had dinner almost as soon as he came home. He came home very late in the summer.

Q. After dinner would he go to sleep?

A. After dinner he would throw himself down on a lounge that was on the porch and go to sleep almost immediately, and would sleep there until I had to arouse him to go upstairs.

Q. You say Mr. Runk was restless. Was there any motion that you noticed in his hands?

A. No, no particular motion; just a constant moving. His fingers and hands would move all the time.

Q. How when he was at meals? Did you notice then?

A. No, because I sat at one end of the table and he at the 120 other. But my sister spoke of the constant motion of his feet at the table, that it made her nervous.

Q. Who is your sister?

A. Mrs. Brown.

Q. She is not here?

A. No.

Q. Did you notice any change in the summer of 1892 in the expression of Mr. Runk's countenance?

(Objected to as leading. Objection sustained.)

Q. State everything in regard to Mr. Runk's appearance and manner in 1892 that attracted your attention.

A. Mr. Runk's face became very strained, had a tense, intense look that was very different from his former expression—a set look.

Q. Can you recall any instances of Mr. Runk showing the irritability of which you have spoken in the summer of 1892?

A. I can recall one instance that struck me as being a very unnecessary display of irritability, when the subject was brought up of the man at Pittsburg, I think, who was strung up by his sons. It was during the riot at Pittsburg, and Mr. Runk became violently excited on the subject, said he thought the man had been persecuted, and thumped on the pavement and became very, very violently excited, and unnecessarily so, as he had never shown any interest in the man before, and we had visitors that evening and I was very much mortified at his unnecessary display of irritability.

Q. Where did you go the latter part of the summer of 1892?

A. We were up at the Water Gap about two or three days.

Q. Did anything occur there that attracted your attention from what Mr. Runk did or said?

A. No.

Q. When did you return from the Water Gap?

A. We went on Monday and came home Friday, I think.
Q. Where were Mr. Runk's two sons in the summer of 1892?
A. They were both abroad.
Q. When did they return?
A. I think the second week of September, or the third week, I am not sure. I think the third week.

Q. Mr. Runk's death is stated to have occurred on the 5th of October, 1892. What was Mr. Runk's manner of conduct during the week immediately preceding his death?

A. He was feeling very unwell at the time; he had had a very severe sore throat and was very weak and miserable. He seemed very nervous and preoccupied, and quite unlike himself in every way.

Q. In what way?

A. He seemed indifferent to all his surroundings, and he was very quiet. I saw very little of him; he came home late in the evening, and went away early in the morning.

121 Q. Coming down to the 5th of October, 1892, do you remember what time Mr. Runk went into town on that morning?

A. The usual time, half past seven.

Q. When did he return?

A. He came out in the 2.45 train, I think, in the afternoon, or the 3.15, I can't remember which.

Q. Do you happen to recall what sort of a day it was?

A. It was a very cold day. It snowed at intervals. It was a very unusual day for that time of the year.

Q. State what occurred after Mr. Runk returned on that afternoon.

A. He came in the house from the station and came immediately upstairs. He always spoke to me when he came in, but I didn't know he was in the house until he came to the head of the stairs. Then he walked right in the room where I was busy with the seamstress, with his hat on his head, a thing he had never done in his life before, I think, and when he came in I noticed his manner was very excited and his face very pale. He walked up to me, and I said to him, "Have you come to go driving?" He told me, "No," he had some work to do that he had come home to do.

Q. Did he say what sort of work it was?

A. Writing. Then he went into the other room, and I followed him. He went in his dressing-room. When I got in there he was standing on a chair feeling in the back part of the shelf of the closet. I asked him what he wanted. He didn't answer me, and his daughter came in the room just then and she stood looking at him, and he turned around to her and said, "What are you looking at? Do you think I am an elephant?" Then he went on with his work in the closet.

Q. How old was his daughter?

A. Fourteen. Then I said to him, "Is it anything I can do for you?" He told me, "No," and I asked him if he wanted any

lunch, and he said, "No," and then I went back to my work. Mr. Runk went downstairs, and in a little time after that I went down to see if I could get him anything, and I found him writing. I spoke to him, asked him if he wanted anything, and he said, "No."

Q. That was before dinner, was it?

A. That was before dinner. After a while the little children came home, and I took them downstairs.

Q. What little children were they?

A. Our own little children. So they came downstairs, because their father was very fond of seeing them whenever he was home, and he turned around and said, "Take the children upstairs, their noise distresses me." I took them upstairs, although he had spoken to the baby and was very sweet to her, very kind to her, loving, and then I took the children upstairs again and I didn't see Mr. Runk until just when the dinner bell rang again.

Q. The little children were how many?

122 A. Three. Then he came upstairs and I saw him for a minute then before dinner.

Q. Did you see him at dinner?

A. Yes, sir.

Q. Describe his manner, and what was said or done.

A. Mr. Runk didn't speak during dinner to any one but to me, and not to me unless I addressed him.

Q. Who were at the dinner table?

A. Our two sons, my sister, Mrs. Odell and myself, and Bessie, his daughter. He ate no dinner, although he had everything passed to him—he ate no dinner himself and paid no attention to anything going on around him, unless I addressed him, when he looked up and answered me. He seemed to be perfectly absorbed in writing on the table-cloth and looking down. He paid no attention to anything; excepting in the middle of the dinner, when he heard the clock strike, and he jumped up and ran in the other room and did something to the clock and came back again. I saw him very preoccupied, and thought I would talk to him and divert his attention, but he only spoke when I spoke to him.

Q. What time did he dine?

A. About half past six.

Q. About how long did the dinner last?

A. Three-quarters of an hour, perhaps.

Q. After dinner what did he do?

A. He went upstairs to the nursery with me, as was his habit, to bid the little children good night. He bade them good night I noticed very lovingly, and afterwards talked to me, and then I went in my own room with baby and I never saw him again.

Q. Did you go into town with Mr. Runk that morning?

A. I went in town afterwards.

Q. Did you see Mr. Runk?

A. Yes, at the store.

Q. What was his manner and appearance?

A. He was very busy, but he seemed very quiet and very polite.

Q. About what time was that?

A. About 11 o'clock. Half past ten.

Q. Was anybody in Mr. Runk's room at the store when you were there?

— Mr. Farr.

Q. Look at the paper which I now hand you and state whether you recognize that signature.

A. Yes, sir; it is Mr. Runk's.

(Mr. Bispham reads said letter as follows:)

Darlington, Runk & Co.

G. C. T.

October 4, 1894.

Dictated by W. M. R.

PHILADELPHIA, *October 4, 1892.*

George C. Thomas, Esq.

MY DEAR MR. THOMAS: Your communication duly 123 received giving me the list of the committees on Christmas music and Christmas entertainments, and the same will be read on Friday evening.

I also note what you say in regard to Miss Cobb, and I will add that I had a conversation with her mother on the subject on Sunday, and she told me that her daughter had only agreed to take the class for a few Sundays, and could not think of accepting for the long period requested by Mrs. Kirk.

The request in regard to flowers will also have careful attention, and I have received your card to go with them.

The matter of service on Friday evening, October 21st, I will see Dr. Cooper about, in accordance with your request.

I do not know what to say to you in regard to the news in the morning's paper concerning J. B. M. It is certainly a sad ending, and, as we all know, the young man has gone his own way, regardless of all the influence and interest which you and Mrs. Thomas, as well as others, have tried to have over him.

Very sincerely yours,

WM. M. RUNK.

Q. Do you know who was alluded to by the initials "J. B. M."?

A. Yes, sir; Mr. Thomas' nephew, young Mr. Moorehead.

Q. Do you know how he died?

A. Yes, sir; he shot himself.

Q. How many days before this?

A. Monday, I think.

Q. This was written October 4, which was Tuesday?

A. He shot himself Monday.

Q. October 4 was a Tuesday, was it?

A. Yes, sir.

Q. And it was the next day that your husband's death occurred?

A. Yes, sir.

Q. Do you happen to know whether Mr. Runk was well acquainted with Mr. Moorehead?

A. He wasn't well acquainted with him, but he had seen him

frequently at Mr. Thomas' house and had known him for a long while.

Q. Did this young man have anything to do with the Sunday school?

A. Oh, no.

Q. Did you have any conversation with Mr. Runk on the morning of October 5, before he went to town?

A. No particular conversation.

Q. Was anything said then or when you saw him at the store on the subject of the children going to school?

A. He had spoken to me before, before breakfast. We were upstairs talking—he had seen the doctor the day before, and we had just entered our son, Marshal, at a preparatory school for college, and Mr. Runk was very dissatisfied with him, and he related the conversation of the night before, and told me that he intended 124 to make it a point through the entire winter of going in there once a week to see that Marshal was properly instructed and prepared—that he wasn't at all satisfied with the report he had heard of the school. He had worried a good deal, and he hadn't felt satisfied from the beginning.

Q. Did Mr. Runk say anything as to what he was going to do in town that day?

A. No, I don't remember that he did. I had asked him what time he would be home, and he said he couldn't tell me.

Q. From your knowledge of Mr. Runk, and from your observation of his manner in the summer of 1892, which you have described, and from the facts which you have detailed that happened on the 5th of October, 1892, tell me what your judgment is as to Mr. Runk's mental condition at the time of his death?

(Objected to. Objection overruled. Exception by defendant.)

A. I think Mr. Runk's mind was unquestionably unbalanced at the time of his death.

Cross-examined.

By Mr. JOHNSON:

Q. I want you now to say whether you have told this jury everything on which you rest that opinion. Have you now stated to this jury all you saw and all you know on which you rest that opinion?

A. I have stated all that I can clearly account for. I do remember many incidents and many little things, but I can't remember distinctly enough to tell.

Q. I want you to state everything on which you have rested that opinion, so that the jury may form their opinion. If there is anything else state it?

A. The entire change in Mr. Runk's disposition, the entire change in his appearance, his general breaking down in every way. It seemed to me it was simply a crisis; the end was just simply a culmination of what had gone before.

Q. You heard after his death of certain things he had done in his lifetime, did you not?

A. I did.

Q. And you knew nothing at all of them during his lifetime?

A. No.

Q. Do you not think those things would have affected him?

A. I think if he had realized them certainly they would.

By the COURT:

Q. It might be interesting to know whether you formed this opinion of his mental condition before his death?

A. I noticed many things strange.

Q. You have given us your judgment of his mental condition based on what you observed. Did you form the opinion which you have expressed that his mind was unbalanced before his death or afterwards?

A. Afterwards.

125 Q. Then the act of committing suicide had something to do with the conclusion you reached?

A. It had.

ELLA ODELL, having been duly affirmed, was examined as follows:

By Mr. BISPHAM:

Q. You are Mrs. Runk's sister, I believe?

A. Yes, sir.

Q. Where do you live?

A. Bridgeport, Connecticut.

Q. You knew Mr. Runk?

A. Very well.

Q. Were you acquainted with him before his marriage to your sister?

A. Always.

Q. What was Mr. Runk's character, and disposition, and manner before 1892?

A. He was always very pleasant, always, and very bright.

Q. Was there anything else you noticed that you can describe about his character or manner, as to his temper or disposition?

A. He was naturally of a nervous temperament.

Q. How about his disposition?

A. He was always very even-tempered.

Q. Did you see Mr. Runk in the summer of 1892?

A. No; I saw him the spring before.

Q. Did you see him in September or October, 1892?

A. I was there.

Q. When did you go to Mr. Runk's house?

A. About four or five days before his death.

Q. Then you saw Mr. Runk?

A. Yes, sir.

Q. Did you notice any change in his manner, and, if so, describe it.

A. Yes, sir; he was extreme- irritable; irritable over very little things.

Q. Can you give us any instances of that?

A. Yes, sir; a very little affair excited him very much. About Tuesday morning at breakfast he got in a terrible wrath because the grapes were not cold. They had been standing in the dining-room over night, and that was something. He would always take things as they would come without saying anything; without making any special fuss over it.

Q. What else did you notice, if anything?

A. Well, in that way, that he was very excited over very little things.

Q. Did you see him on the day of his death, October 5, 1892?

A. Yes, sir.

Q. Did you see him at breakfast?

A. Yes, sir.

126 Q. What was his manner then?

A. As usual.

Q. Did you see him after he came out in the afternoon?

A. I was the first to see him.

P. Describe what you noticed when you saw him?

A. He startled me as he came in the room. I was sitting opposite the hall, and his wife was a little at one side, though she didn't see him as soon as I did, and he was very white and his eyes seemed to be just like glass, and I was going to exclaim to him, "Oh, what is the matter?" but I knew he didn't like anything said, and so on second thought I said nothing.

Q. That was when he came in?

A. That was when he came into the room.

Q. Describe the house. There is a hall, the entrance?

A. We were on the second floor.

Q. This was in the hall on the second floor, was it?

A. No; the room we were sitting in was three rooms back, and we had to go through one room to get in the other, in that way; it was in the wing. He came upstairs with his hat on, which startled me to commence with, for as many times and as often as I saw him I had never seen him before come in this way; he was very particular about little things, and he came with his hat and overcoat on, flustered in the room in this kind of a way, and he came right in, and his wife when he got in the room said, "Why are you home?" and he said, "Yes; I have some writing to do; I have some work to do." She said, "What is it?" and he said, "Some writing."

Q. What else happened?

A. Then he said something, then turned around and went up to the room, and his wife followed him.

Q. When did you next see him on that afternoon?

A. He was down in the lower hall.

Q. What happened then that you observed?

A. I didn't go down. I started to go down and found he was busy writing, and then I didn't go down.

Q. The lower hall was used as a sitting-room?

A. Yes, sir; it was a hall room. It was a regular room in a country house. As you enter from the hall there was a square room.

Q. When that afternoon did you next see Mr. Runk?

A. After seeing him down there? It was at the dinner table.

Q. Describe his appearance and manner at the dinner table.

A. At the dinner table he seemed to be very much—he acted very strange and didn't eat anything at the dinner table, and everything that was passed to him he helped himself to, but ate nothing, and all the time at the table he was sort of making figures and one thing and another on the tablecloth with his fork, and he couldn't keep himself still. He was all in motion and twitching all the time. He had been for several days as though his nerves were completely unstrung.

127 Q. Did you see him after dinner?

A. Oh, yes.

Q. Where, or in what part of the house?

A. Down in the parlor. I was sitting there.

Q. What was his manner and appearance there?

A. Then he just walked around the room, and he didn't have a word to say to any one.

Q. How long did he remain in the parlor?

A. Oh, about five minutes; that is all. He walked up and down about twice.

Q. Did you see him again after that?

A. No; he put his hat on and went out the door.

Q. Did you see him again that evening at all?

A. Not until we brought him in.

Q. You never saw him alive?

A. Not after that; no.

Q. From your knowledge of Mr. Runk and your observation of his conduct and manner as you have detailed, what is your judgment as to Mr. Runk's mental condition at the time of his death?

(Objected to. Objection overruled. Exception by defendant.)

A. I think he was insane at his death. I think his mind had become thoroughly unbalanced.

Cross-examined.

By Mr. JOHNSON:

Q. When do you say you noticed any change in him?

A. There was a great change from the time of my seeing him in the spring until I went there in the fall.

Q. When did you first notice any change?

A. From the time I got there.

Q. When was that?

A. I arrived the Thursday before.

Q. When first in his life did you notice any change?

A. I don't know. I thought for several years he had been more or less nervous.

Q. How many years?

A. I don't know as I can put down just the years, but I know several years.

Q. I want your best idea of how many years you thought he was nervous.

A. He had always been more or less nervous.

Q. Nervousness was always one of his characteristics?

A. No; not in the way he was of late. That was entirely different. His nervousness—for the last few days he couldn't sit still.

Q. When first did you notice any marked change in his nervousness?

A. The change was very great in the fall.

128 Q. When first did you notice any marked change in his nervousness?

A. I hadn't seen him for two or three years to be in the house with him.

Q. Then practically you had not seen him for two or three years before going there four or five days before his death?

A. I was in Philadelphia, but I wasn't staying in his house.

Q. Then you did not pay any attention to him?

A. Not particularly.

Q. Then the first time you really paid any attention to any change was this period of four or five days before his death?

A. And then I could see a very great change.

Q. That is the first time any change struck you, is it?

A. Of his extreme nervousness; yes, sir.

Q. I am not confining you to any particular thing. Was there any other?

A. He couldn't sit still a minute. He was all of a twitch; seemed as though he had no control over himself.

Q. Had he not always a nervous habit of twitching his hands?

A. No.

Q. That you first noticed when you came there the last visit, did you?

A. Well, he had a movement all his life.

Q. What other change did you first notice then?

A. He was very far from well; he had a bad cold.

Q. What else besides nervousness and having a bad cold did you notice? You have expressed an opinion here, and I want to know on what you rest it. Tell me all the changes that you noticed, so that the jury may form a judgment.

A. He struck me instantly as if things had reached a climax; as if his nervousness had gone beyond him.

Q. You thought he was very nervous then, did you?

A. That it had gone beyond his control.

Q. You thought then he was very nervous. What other changes did you notice? Give us all you noticed, so that we may have our own judgment.

(No answer.)

By the COURT :

Q. Can you not name anything else ?

A. I cannot.

By Mr. JOHNSON :

Q. Then we may take it that what you thought was his nervousness had gone beyond his control ?

A. Yes, sir ; as if he was in that condition that he was entirely unaccountable for it.

Q. I suppose you expressed that opinion then ? You told your sister that you thought he was unaccountable for his conduct, did you ?

129 A. Certainly.

Q. You told your sister then before his death ?

A. No, not before his death. Do you suppose I would make a remark like that to my sister ?

Q. Did you make any comment ?

A. I am not in the habit of making comments.

Q. Then you did not make any comment on his appearance, did you ?

A. To my sister ?

Q. Or to any one ?

A. I did to another sister. I said he seemed very far from well.

Q. That is what you said ?

A. Yes, sir.

Q. Then the comment which you made was that he seemed very far from well ?

A. Very far from well, and that he was very much worse than I had ever seen him.

Q. Did you have any talk with him ?

A. Nothing more than what I have stated.

Q. At any time during your visit there this last time ?

A. I talked sociably.

Q. Tell us a single remark he made that was not strictly pertinent to the question put to him, or that indicated in any way that he did not thoroughly understand what was asked him.

A. I saw very little of him.

Q. But you saw enough of him to express an opinion, and therefore I want to see what you did see when you saw him. Tell us one earthly thing that that man said which was not most intelligent in response to any question that was put.

(No answer.)

By the COURT :

Q. Do you remember anything ?

A. I don't remember anything special. I saw so little of him. He left early in the morning and then he would come in just a few minutes before dinner.

By Mr. JOHNSON:

Q. I might understand how seeing so little of him you would not have an opinion at all; but if you had an opinion you must have seen enough of him to have formed it, and I now want you to give the jury the benefit of all you saw on which you rest that opinion, little or much. Tell me if there was one single question that any human being addressed to him to which he did not intelligently respond.

A. I am trying to think of something, but the events afterwards put everything at the time out of my mind.

Q. Take your own time and think of it.

(No answer.)

130 By the COURT:

Q. You do not recall anything?

A. I don't recall anything special.

By Mr. JOHNSON:

Q. I understood you to tell Mr. Bispham that he was of a cheerful disposition prior to 1892?

A. Very.

Q. Then although prior to that time he had embezzled the moneys of the city mission, he still, after he had done that, until 1892, remained of a cheerful disposition?

A. Perfectly. There wasn't a particle, to my knowledge, of change came to him in any way from what he had been for years.

Q. In what way did this nervousness of which you speak manifest itself other than in the ways you have stated?

A. Well, when I say the man had no control over himself.

Q. Tell us what you mean by that.

A. He couldn't sit still one single moment; he seemed as though every single limb was in a twitch.

Q. That is a little exaggerated, is it not? He did not get up from the dinner table, excepting once when the clock struck.

A. He would sit at the dinner table and his arms and hands would go. I sat next to him and it was misery, because he was so constantly in motion; his arms were going and his feet.

Q. What would he talk about at the dinner table?

A. He hadn't as much to say as usual while I was there.

Q. Did he talk?

A. The last afternoon at dinner he said nothing.

Q. Did he not talk to his wife?

A. She asked him one or two questions, and that was all.

Q. What was she talking about, and what did he say?

A. I couldn't say now. She only asked him one question.

Q. He responded, did he not?

A. Oh, he said something, but I really didn't pay attention to what he said then. She asked him once if he didn't want any dinner, and he said he wanted nothing.

R. After dinner you say he was down in the parlor?

A. Just a minute. Walked through back and forth once or twice.

Q. Whom did he speak to there?

A. He spoke to me.

Q. What did he say?

A. He said, "Marshal will mail your letter."

Q. Had you given him a letter?

A. I had a letter written to go to my husband, and Marshal was going to take it down to the station to mail.

Q. Mr. Runk told you after dinner in the parlor that Marshal had mailed your letter?

131 A. No; he would mail it. It laid there.

Q. What else did he say?

A. He didn't make any remark whatever. That was the only thing that was said.

Q. You did not know of any of these things that you heard after his death?

A. Not a word.

Q. You do not think those would have made him very nervous?

A. Of course if I had known of it I might have thought so, but I knew nothing at all whatever.

Q. If you had known that he had been embezzling the funds of the church and of the city mission would not that have accounted for the nervousness which you saw?

A. I knew nothing about it.

Q. Suppose you had would not that have accounted for all the nervousness you saw?

A. No, I think not.

Q. You do not think he would have been nervous?

A. It would make most anybody nervous, but I don't think it was that. I think his temperament was such, he had applied himself so closely to business, and his health had given away to such an extent, that he couldn't control himself longer.

Q. You knew no reason whatever why he should be nervous at that time, did you?

A. I knew nothing about his personal affairs.

Q. And you have told us all you now recall that he said and did on which you rest the opinion you have expressed, have you not?

A. Yes, sir.

Re-examined.

By Mr. BISPHAM:

Q. After dinner where did Mrs. Runk go?

A. Up with the baby.

Q. You went in the parlor?

A. I did.

Q. And Mr. Runk you say came in the parlor?

A. He went upstairs. He followed her upstairs.

Q. And then came down in the parlor?

A. Yes, sir.

Q. And then went out?

A. Yes, sir.

Q. Did he go out of the house?

A. Yes, sir.

Q. How long after that was it that you heard of him shooting himself?

A. Marshal had left the house for the depot I think about five minutes afterwards; he had left the house, and then he had 132 been gone but two or three minutes, when they came in for me. He had been gone but a few minutes, and they came in for me, and of course my first thought was that there was some bad news for me. I never thought anything had happened.

Q. Then were you informed that Mr. Runk had shot himself?

A. Yes, sir; and then I said, "That can't be, send for the doctor."

Q. When did you next see Mrs. Runk?

A. She heard a little commotion downstairs, and she rushed down.

TOM TINGLE, having been duly affirmed, was examined as follows:

By Mr. BISPHAM:

Q. You were in the employ of Darlington, Runk & Co.?

A. Yes, sir.

Q. And you are still in the employ of Joseph G. Darlington?

A. Yes, sir.

Q. What was your position with Darlington, Runk & Co.?

A. I am foreign buyer for Joseph G. Darlington & Co. at the present time.

Q. How long have you been such?

A. I have been in the employ of the firm about twelve years.

Q. You knew Mr. Runk, of course?

A. Perfectly well.

Q. You saw him frequently?

A. Frequently, certainly.

Q. About how often did you see him? Was it daily?

A. I should think almost hourly, when he was in business.

Q. Were you familiar with his manner and appearance?

A. Certainly.

Q. Did you see him during the summer of 1892?

A. Well, not so much. I was away in Europe a great portion of May and June.

Q. When did you return from Europe?

A. About the middle of July.

Q. Did you see Mr. Runk after you returned?

A. Certainly.

Q. Did you notice any change in his appearance and manner?

A. Yes, I did, certainly.

Q. What was it? Describe it.

A. I would call it a state of unrest, unquiet, uneasy and fidgety way.

Q. How did that show itself?

A. By the simple fact that you couldn't get his attention to any given subject for one minute. Not for a minute, so far as my recollection goes.

133 Cross-examined.

By Mr. JOHNSON :

Q. Give me one instance of where you tried to get his attention and could not.

A. As I would tell the jury, the tale is quite plain and quite easily understood. In the early portion of September we had some goods in the custom-house. In the morning I told Mr. Runk that those goods were required. That would be, perhaps, ten o'clock in the morning. During the day a customer comes and inquires for the same goods, or a portion of those goods that were in the custom-house. In the afternoon I went to him and said, "Mr. Runk, I suppose those goods are being taken out of the custom-house." He had forgotten all about it.

Q. Give another instance of where you could not get his attention. Give me all the instances you recall.

A. It may have been a day before, or a few days afterwards, he had sent for me, and he had even then forgotten that he had sent for me.

Q. Are those all the instances ?

A. Yes, sir; those two facts are all that I can recall.

Q. Have you given all the instances in which you could not get his attention ?

A. Yes, sir. That was in September, before he died.

J. ALFRED MILLER, having been duly sworn, was examined as follows:

By Mr. BISPHAM :

Q. You were in the employ of Darlington, Runk & Co. in 1892, were you not?

A. Yes, sir.

Q. And had been for how long?

A. Six years at that time.

Q. In what capacity?

A. Credit clerk.

Q. Of course you knew Mr. Runk very well?

A. Yes, sir.

Q. You saw him frequently?

A. Every day.

Q. Did you see Mr. Runk on the 5th of October, 1892?

A. Yes, sir.

Q. What time of the day?

A. About two o'clock. Either half past one or two.

Q. What did he say?

A. He came in the office and made some remark that I didn't

catch. I said, "Did you say you were not coming back?" He said,

"No, no, I will be back."

134 Q. That was the day of his death?

A. Yes, sir.

Q. Did you notice his appearance and manner? If so, describe it.

A. His face had a drawn and white look, and I noticed a twitching around the muscles of the eyes, or the eyelids, I don't know which.

Q. Was there anything else about his appearance and manner that you noticed?

A. No, sir.

Cross-examined.

By Mr. JOHNSON:

Q. Was that the first time his face ever had a white look and a worn look about the eyes?

A. No, sir.

Q. When did you first find his face having a white look?

A. That summer.

Q. During the whole summer?

A. Yes, sir.

Q. And that was the time when he was running the store in the absence of Mr. Darlington, was it not?

A. Yes, sir.

Q. So that you noticed his face with this white look while he was running the store in sole charge of the whole of that large business?

A. Not to the marked extent I did on the last day.

Q. Still it had the same white and worn look, and during the whole of that time he was running this great business?

A. Yes, sir.

Re-examined.

By Mr. BISPHAM:

Q. Mr. Darlington used to go abroad in the summer, did he not?

A. Yes, sir.

Q. And Mr. Runk would remain behind in charge of the business?

A. Yes, sir.

Q. That was the usual thing?

A. Yes, sir.

SIMON PORTER, having been duly sworn, was examined as follows:

By Mr. BISPHAM:

Q. What is your business?

A. I am a canvasser for an insurance company.

Q. What particular companies do you represent?

A. At the present time I represent the Berkshire.

Q. Did you know Mr. Runk?

A. I did.

Q. How many years have you known him?

135 A. About six years.

Q. Did you have any conversation with him in 1890 on the subject of insurance?

A. To the best of my recollection I had.

Q. Had you any conversation prior to that?

A. Yes, sir.

Q. What companies were you representing?

A. Prior to 1890 I represented the Mutual Life, and I was soliciting then for insurance in the Mutual Life.

Q. Did you place any insurance for him in the Mutual Life at that time?

A. I did not.

Q. Why not?

A. He was not ready to take any.

Q. In 1890 did you have any conversation with him?

A. Yes, sir; I asked him if he was not ready to increase his line of insurance.

Q. What did he say?

A. He said he was not ready.

Q. What else was stated?

A. Nothing particular; nothing special. I merely called his attention to the fact that he had promised to give me some insurance.

Q. When was it that he made this promise to give you some insurance?

A. It was, as near as I can recollect, about 1889, or previous to 1890.

Q. Did Mr. Runk finally take any insurance of you?

A. He did.

Q. When?

A. In 1892.

Q. State what that promise Mr. Runk made to you was.

A. He promised to insure his life with me when he was ready. I was acquainted with him, and on account of friendship he said he was willing to give me some insurance, if he ever was ready to take any more.

Q. It was in January, 1892, I think, that this increase was taken?

A. Yes, sir.

Q. Did you go to Mr. Runk then, or did he come to you?

A. I went to Mr. Runk.

Q. What passed then?

A. After two interviews, or three, I took his application for a policy in the Berkshire.

Q. What did he say when you first spoke to him in January, 1892, about taking out insurance?

A. He had about made up his mind to increase his line.

Q. Did he take it at once?

A. No; I had three interviews before he signed the application.
Q. Was anything else said at that time? Was there any reference to other companies?

136 A. He said he was taking some insurance in some other companies.

Q. Did you refer to the promise which he had made?

A. Yes, sir.

Q. What did he say about that?

A. He said he had promised to insure with me, and was about fulfilling his promise.

Cross-examined.

By Mr. JOHNSON:

R. Did you ever place any insurance for him before this January, 1892?

A. No, sir; not on him.

Q. You tried to do so in 1890?

A. Yes, sir.

Q. You urged on him in every way, I suppose, that he should take it?

A. Certainly.

Q. What reason did he give for not taking any more?

A. He was not ready to increase his line of insurance; he had all he wanted.

Q. What did he say by not being ready? That he had not the money, or what?

A. No, he didn't say that particularly. He said he thought he had enough insurance at the present time.

Q. He told you then in 1890 that he thought he had enough insurance, and positively refused to take more?

A. At that time he thought he had enough.

Q. In January, 1892, or thereabouts, when you stopped to see him, he told you he had concluded to increase his line, did he?

A. Yes, sir.

Q. And did he tell you he had increased it beyond what it was in 1890 by the Mutual policies?

A. No. That statement came out in his application. He was applying for some at that time.

Q. Did he give you in January, 1892, any reason why he had about made up his mind to do what in 1890 he had refused to do, increase his line?

A. Not to my recollection.

Re-examined.

By Mr. BISPHAM:

Q. Did you have any interview with him in 1891?

A. Yes, sir. I saw him, I suppose, every month, and I often would ask him if he was not ready. He had given me the names of some of his friends who had insured. I would often go and see

him and often ask him if he was not ready to increase his insurance.

137 Mr. Bispham offers in evidence on behalf of plaintiff the letter heretofore identified by Mrs. Evaline Runk. (See page 221.)

Plaintiff closes

Testimony closed.

(The following is a copy of the account referred to in the testimony of William G. Hopper on page 99 of the testimony, and offered in evidence on behalf of defendant:)

Wm. M. Rank.

1888.		1888.	
Apr. 10.	To loan on \$4 M. L.	May 12.	By C.....
	Navg. R. R. loan &	June 13. 22 92
	\$1 M. P. C. & St.		22 92
	L., 76..... 5,500 00		
May 12.	" int..... 22 92	July 13.	" C..... 22 92
June 13.	" "..... 22 92	Aug. 13.	" "..... 23 68
July 13.	" "..... 22 92	Nov. 26.	" "..... 68 76
Aug. 13.	" "..... 23 68	Dec. 31.	" " 12 31..... 22 92
Nov. 13.	" " 3 mos. to date. 68 76	Apr. 9.	" "..... 91 68
Dec. 13.	" "..... 22 92	10.	" "..... 5,500 00
1889.			
Jan. 12.	" "..... 22 92		
Feb. 11.	" "..... 22 92		
M'ch 13.	" "..... 22 92		
Apr. 9.	" " to 4 12..... 22 92		
			5,775 80
1889.			5,775 80
Apr. 11.	To loan on 4 M. L.	Oct. 7.	By C..... 113 83
	Navg. R. R. loan	9.	" P. C. & St. L. & 7's
	& \$1 M. P. C. & St.		coup. del'd.
	L. 7's..... 5,500 00		
July 8.	" int. for 3 mos..... 67 99		
Aug. 7.	" " " 30 d's..... 22 92		
Sept. 7.	" " " 30 d's..... 22 92		
Oct. 7.	" " " 30 d's..... 22 92		
Dec. 7.	" " " 61 d's at 6 % 55 91		
1890.			
Feb. 6.	" " " 60 " " 55 00		
Apr. 11.	" " " 64 " " 58 66		
138			
July 11. 83 42		
Aug. 9.	To int. for 30 d's at 6 % 27 50		
29.	" C. % P. C. & St. L.		
	coup..... 33 50		
Nov. 7.	" 3 mos. int..... 83 42		
Dec. 8.	" int..... 28 41		
			6,062 57
			6,062 57

Wm. M. Runk—No. 2.

1891.		1891.		
July 1.	To 300 Rdg. 14 $\frac{1}{2}$...	4,293 75	July 6. By 300 Rdg. 14 $\frac{1}{2}$...	4,331 25
8.	" 100 Atch. 33 $\frac{1}{2}$...	3,325 00	13. " 100 St. Paul 65...	6,487 50
	" 100 St. Paul 65...	6,512 50	16. " 100 St. Paul 64 $\frac{1}{2}$...	6,462 50
10.	" 100 " " 64 $\frac{1}{2}$...	462 50	17. " 100 St. Paul 64 $\frac{1}{2}$...	6,462 50
15.	" 100 " " 64 $\frac{1}{2}$...	6,437 50	28. " 200 Atch. 31.14...	6,325 00
16.	" 100 " " 64 $\frac{1}{2}$...	6,437 50	" 3 d's int. 100 b. 5...	1 59
20.	" 100 " " 64 $\frac{1}{2}$...	6,437 50	30. " 100 St. Paul 62 $\frac{1}{2}$...	6,237 50
	" 100 " " 64 $\frac{1}{2}$...	6,412 50	31. " bal.....	1,334 06
31.	" Atch. 32 $\frac{1}{2}$...	3,262 50		
	" int.....	71 65		
		49,652 90		49,652 90

July 31.	To bal.....	13,345 06	Aug. 3. By 100 St. Paul 62 $\frac{1}{2}$...	6,212 50
Aug. 18.	" 30 Penna. rec'd.		" 100 St. Paul 62 $\frac{1}{2}$...	6,250 00
19.	" 100 Pac. pfd. 66 $\frac{1}{2}$...		8. " C.....	600 00
	" 100 " " 66 $\frac{1}{2}$...		13. " 100 Pac. pfd. 61 $\frac{1}{2}$...	6,112 50
	" 200 Un. Pac. 38...	21,100 00	14. " 100 Pac. pfd. 60 $\frac{1}{2}$...	6,062 50
21.	" 100 Pac. pfd. 66 $\frac{1}{2}$...	6,650 00	" 100 Pac. pfd. 61 $\frac{1}{2}$...	6,175 00
	" 100 Un. Pac. 36 $\frac{1}{2}$...	3,681 25	31. " bal.....	13,388 75
31.	" int.....	24 94		

139		44,801 25		44,801 25	
Aug. 31.	To bal.....	13,388 75	Sep. 3. By 300 Un. Pa. 42 $\frac{1}{2}$...	12,656 25	
Sep. 1.	" 100 Pac. com. 27 $\frac{1}{2}$...	2,737 50	8. " 300 Rdg. 17 $\frac{1}{2}$...	5,306 25	
4.	" 100 Rdg. 17 $\frac{1}{2}$...	1,762 50	" 100 Pac. com. 26 $\frac{1}{2}$...	2,637 50	
	" 200 Rdg. 17 $\frac{1}{2}$...	3,512 50	" 100 " 27...	2,687 50	
	" 100 Pac. com. 26 $\frac{1}{2}$...	2,662 50	16. " 300 Rdg. 18 b. 3	5,531 25	
	" 100 Pac. com. 26 $\frac{1}{2}$...	2,625 00	18. " 100 Pac. com. 28		
8.	" 200 Penna. 53 $\frac{1}{2}$...	10,775 00		b. 3.....	2,787 50
9.	" 300 Rdg. 18.....	5,418 75		" 200 Penna. 54 $\frac{1}{2}$...	10,825 00
21.	" 300 N. Ann. 17 $\frac{1}{2}$...	5,362 50	21. " 200 St. Paul 73 $\frac{1}{2}$...	14,700 00	
	" 200 N. Ann. 17 $\frac{1}{2}$...	3,525 00	22. " 200 Pac. com. 30 $\frac{1}{2}$...	6,050 00	
	" 200 St. Paul 72 $\frac{1}{2}$...	14,500 00	" 200 N. Ann. 18 $\frac{1}{2}$...	3,725 00	
	" 200 Pac. com. 29...	5,825 00	" 100 N. Ann. 19...	1,887 50	
22.	" 300 Rdg. 21 $\frac{1}{2}$...	6,562 50	23. " 200 Pac. com. 30 $\frac{1}{2}$...	6,075 00	
Sept. 23.	" 400 Pac. com. 30...	12,050 00	24. " 100 Pac. com. 29 $\frac{1}{2}$...	2,975 00	
	" 100 Rdg. 21 $\frac{1}{2}$...	2,131 25	28. " 100 St. Paul 74...	7,387 50	
24.	" 100 Pac. com. 29 $\frac{1}{2}$...	2,950 00	" 100 Pac. com. 29 $\frac{1}{2}$...	2,975 00	
	" 100 St. Paul 74 $\frac{1}{2}$...	7,437 50	30. " bal.....	21,882 30	
28.	" 100 Pac. com. 29 $\frac{1}{2}$...	2,925 00			

140		Wm. M. Runk—No. 2.		
1891.		1891.		
Sept. 28.	To 200 N. Ann. 19 $\frac{1}{2}$	3,850 00		
	" int. Aug.....	8 31		
30.	" int.....	78 99		
		110,088 55	110,088 55	
Sept. 30.	To bal.....	21,882 30	Oct. 5. By 200 N. Ann. 19...	3,775 00
Oct. 31.	" int.....	96 70	31. " bal.....	18,204 00
		21,979 00		21,979 00
Oct. 31.	To bal.....	18,204 00	Nov. 13. By 100 Pac. com. 26 $\frac{1}{2}$	2,612 50
Nov. 19.	" 100 Pac. com. 25 $\frac{1}{2}$	2,587 50	30. " bal.....	18,267 36
30.	" int.....	88 36		
		20,879 86		20,879 86

Nov. 30. To bal.	18,267 36	Dec. 11. By 100 Pac. com. 24½	18,353 70
Dec. 31. " int.	86 34	b. 3.	2,412 50
	<hr/>	31. " bal.	15,941 20
	<hr/>		<hr/>
	18,353 70		18,353 70
Dec. 31. To bal.	15,941 20	1892.	
1892.		Jan. 12. By 200 Rdg. 21½	4,200 00
Jan. 12. " 100 L. N. A., &c.,	2,937 50	" 200 Rdg. 21½	4,187 50
29½		29. " 100 N. Amn. 16½	1,625 00
" ½ % com's on		30. " bal.	10,537 94
above.	6 25		<hr/>
21. " 100 N. Amn. 15½	1,600 00		20,550 44
30. " int.	65 49		<hr/>
	<hr/>		20,550 44
Jan. 30. To bal.	10,537 94	M'ch 7. " 300 St. Paul 79½	23,775 00
M'ch 4. " 300 St. Paul 78½	23,700 00	8. " 200 Rdg. 28.	5,587 50
7. " 100 Pac. pfd. 67½	6,787 50	" 100 Pac. pfd. 68½	6,800 00
141		10. By 100 St. Paul 77½	7,712 50
M'ch 7. To 100 St. Paul 80c.	8,012 50	11. " 100 Rdg. 27½	2,750 00
8. " 100 Rdg. 27½	2,750 00	" 100 " 27½	2,731 25
" 100 " 27½	2,756 25	" 100 St. Paul 77½	7,725 00
9. " 100 St. Paul 78½	7,837 50	31. " bal.	11,166 17
14. " 100 Rdg. 28½	2,881 25		<hr/>
" 100 " 28½	2,856 25		68,247 42
" int.	128 23		<hr/>
	<hr/>		68,247 42

Wm. M. Rank—No. 2.

1892.		1892.	
M'ch 31. To bal.	\$11,166 17	Apr. 5. By cash.	\$500 00
Apr. 13. " 17 L. 58.	988 12	11. " "	5,000 00
" 69 L. V. 58½	4,027 88	12. " 100 N. Amn. 14½	1,412 50
20. " 200 " 60.	12,025 00	14. " 100 " 14½	
" 100 Rdg. 30.	3,006 25	b. 3.	1,425 00
" 100 " 29½	2,956 25	18. " 100 L. N. A. & C.	
21. " 100 L. Valley 58.	5,812 50	25½	2,531 25
" 100 Rdg. 29.	2,906 25	21. " 100 Rdg. 29½	2,918 75
" 100 " 28½	2,856 25	25. " 100 Rdg. 29½	2,918 75
27. " 100 Penna. 56½	5,650 00	" 100 L. Valley 58½	5,862 50
29. " 100 L. Valley 58.	5,812 50	26. " 100 Pac. com. 21½	2,162 50
30. " int.	77 02	20. " bal.	32,552 94
	<hr/>		<hr/>
	57,284 19		57,284 19
Apr. 30. To bal.	32,552 94		
May 3. " 100 Pac. pfd. 59½	5,950 00	May 2. By 100 L. Valley 58½	5,862 50
13. " 100 " 57.	5,712 50	" 100 Rdg. 30½	3,018 75
" 100 " 57½	5,787 50	19. " 100 Pac. pfd. 56½	5,662 50
16. " 100 " 56½	5,637 50	27. " 100 Rdg. 30½	3,043 75
142		31. " div'd 100 Penna.	150 00
May 19. To 100 Pac. pfd. 56.	5,612 50	By bal.	49,112 32
20. " 100 " 53½	5,387 50		<hr/>
31. " int.	209 38		66,849 82
	<hr/>		<hr/>
1892.		1892.	
May 31. To bal.	49,112 32	June 1. By 100 L. Valley 61½	6,112 50
June 2. " 100 L. Valley 60½	6,087 50	" 100 Pac. pfd. 53.	5,287 50
" 100 Pac. pfd. 52½	5,212 50	6. " 100 Pac. pfd. 52½	5,250 00

7.	" 100 Rdg. 29 $\frac{1}{2}$..	2,981 25	8.	" c'k.....	1,500 00
	" 100 L. Valley 60 $\frac{1}{2}$	6,062 50		" 50 Rdg. to No.	
	" 50 Rdg. 29	161,500 00		3 %.	
8.	" 100 " 29 $\frac{1}{2}$..	2,931 25	9.	" c'k 5	440 63
	" 15 " 29 $\frac{1}{2}$..	440 63	10.	" 100 Rdg. 29 $\frac{1}{2}$..	2,956 25
10.	" 100 St. Paul 179.	7,912 50	13.	" 100 St. Paul 80 $\frac{1}{2}$	8,050 00
15.	" 100 Pac. pfd. 55 $\frac{1}{2}$	5,600 00		" 100 Pac. pfd. 55 $\frac{1}{2}$	5,525 00
16.	" 100 L. Valley 60 $\frac{1}{2}$	6,087 50	14.	" 100 Pac. pfd. 56 $\frac{1}{2}$	5,625 00
	" 100 Rdg. 30	3,006 25	15.	" 100 Rdg. 30 $\frac{1}{2}$..	3,031 25
20.	" 100 St. Paul 82 $\frac{1}{2}$	8,250 00	16.	" Penna. 55 $\frac{1}{2}$ b ..	35,550 00
21.	" 100 Rdg. 29 $\frac{1}{2}$..	2,981 25	20.	" 100 St. Paul 83 ..	8,287 50
27.	" 100 Pac. 56 $\frac{1}{2}$..	5,675 00	23.	" 100 Pac. 3 pfd.	
				564	5,637 50
			30.	" bal.....	59,109 73
		113,840 45			122,362 86

Wm. Runk—No. 2.

1892.		113,840 45	1892.		122,362 86
June 29.	To 100 St. Paul 82 $\frac{1}{2}$	8,275 00			
30.	" int.....	247 41			

143		122,362 86			122,362 86
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June 30.	To bal.....	59,109 73	July 1.	By 15 Rdg. del'd.	
July 14.	" 100 Pac. pfd. 55 $\frac{1}{2}$	5,562 50	11.	" 100 St. Paul 82 $\frac{1}{2}$	8,212 50
19.	" c'k.....	53 75	14.	" 100 Rdg. 30 $\frac{1}{2}$..	3,037 50
30.	" int.....	270 30	19.	" dvd. 386 L. V.	241 25
			25.	" 100 Pac. pfd. 56 $\frac{1}{2}$	5,612 50
			29.	" 100 " 57 $\frac{1}{2}$	5,775 00
			30.	" bal.....	42,117 53
		64,996 28			64,996 28

July 30.	To bal.....	42,117 53	Aug.	1. By 100 Pac. pfd. 58 $\frac{1}{2}$	5,812 50
Aug. 10.	" 100 St. Paul 82 $\frac{1}{2}$	8,287 50	2.	" 100 Rdg. 30 $\frac{1}{2}$..	3,062 50
	" 100 Pac. pfd. 57 $\frac{1}{2}$	5,750 00	11.	" 200 Rdg. 30 $\frac{1}{2}$..	6,062 50
11.	" 200 Rdg. 30 $\frac{1}{2}$ 3'd's			" 100 St. Paul 83 $\frac{1}{2}$	8,312 50
	int.....	6,040 51	23.	" 100 Rdg. 29 $\frac{1}{2}$..	2,931 25
12.	" 200 Rdg. 30 $\frac{1}{2}$..	6,037 50		" 100 " 29 $\frac{1}{2}$..	2,987 50
	" 100 " 29 $\frac{1}{2}$..	3,000 00	24.	" 100 Pac. pfd. 56 $\frac{1}{2}$	5,650 00
	" 100 " 29 $\frac{1}{2}$..	2,981 25		" 100 Col. Coal 34 $\frac{1}{2}$	3,456 25
	" 100 Col. Coal 33 ..	3,312 50	25.	" 100 Pac. pfd. 56 $\frac{1}{2}$	
	" 100 Pac. pfd. 57 ..	5,712 50		b. 3	5,600 00
15.	" 100 Pac. pfd. 56 $\frac{1}{2}$	5,637 50	29.	" 100 Rdg. 28 $\frac{1}{2}$..	2,887 50
19.	" 100 Rdg. 29 $\frac{1}{2}$..	2,918 75	30.	" 100 Pac. pfd. 56 ..	5,587 50
25.	" 1 $\frac{1}{2}$ % com's 100 C. Coal ..	6 25	31.	" bal.....	45,524 13
26.	" 100 Rdg. 29 $\frac{1}{2}$..	2,931 25			
	" 100 " 28 $\frac{1}{2}$..	2,875 00			
31.	" int.....	266 09			
		97,874 13			97,874 13

1892.		97,874 13			
Aug. 31.	To bal.....	45,524 13	Sep.	8. By 100 Pac. pfd. 55 $\frac{1}{2}$	5,525 00
144			26.	By 100 St. Paul 79 ..	7,887 50
Sep. 2.	To 100 Pac. pfd. 55 ..	5,512 50		" 100 Rdg. 28 $\frac{1}{2}$..	2,831 25
29.	" 100 St. Paul 79 $\frac{1}{2}$	7,937 50		" 100 Rdg. 28 $\frac{1}{2}$..	2,881 25
30.	" 100 St. Paul	7,737 50			2,912 50
	" int.....	227 33	30.	" bal.....	44,901 46
		66,938 96			66,938 96

Sep. 30.	To bal.....	44,901 46	Sep.	30. By bal. exr. ac...	44,901 46
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Wm. M. Runk—No. 3.

1892.		1892.	
June 8.	To 50 Rdg. No. 2 %.	June 10.	By 100 Rdg. 29 $\frac{1}{4}$
9.	" 100 Rdg. 29 $\frac{1}{4}$	7,918 75	13. " 100 St. Paul 79 $\frac{1}{4}$
13.	" 100 St. Paul 79....	7,912 50	
	" int.....	47	
	" c'k.....	74 53	
		10,906 25	
June 16.	To 200 L. Val. 61 $\frac{1}{2}$..	12,250 00	
July 30.	" int.....	89 83	July 1. By 50 Rdg. del'd.
		12,339 83	30. " bal.....
July 30.	To bal.....	12,339 83	12,339 83
Aug. 31.	" int.....	65 81	
		12,405 64	Aug. 31. By bal.....
Aug. 31.	To bal.....	12,405 64	12,405 64
			Aug. 31. By bal. exr. %....
			12,405 64

A. Howard Ritter, Executor of Est. of Wm. M. Runk, Dec'd.

1892.		1892.	
Sep. 30.	To bal. (No. 2 %)....	44,901 46	Oct. 5. By 100 St. Paul 78....
Aug. 31.	" bal. (No. 3 %)....	12,405 64	15. " dvd. 686 L. V....
145			24. " \$250 W. N. G. &
1893.			Sep. 7.
May 31.	" \$3 Penna. sc'p		16 87
	extra dvd. 2 %		100 Rdg. 29....
	& Pa.		2,893 75
Nov. 6.	" int.....	1,122 13	26. " 100 Pac. pf'd. 50%....
			5,050 00
			Nov. 11. " 100 L. V. 58....
			5,787 50
			29. " dvd. 30 Penna....
			45 00
			1893.
			Jan. 18. " 200 L. V....
			19. " 386 "....
			Feb. 4. " coup. \$1 M. Rdg.
			3 d's....
			50 00
			20. " c'k \$1 M. Rdg.
			del'd....
			600 00
			" 500 L. V. 55 $\frac{1}{4}$
			27,562 50
			" 86 L. V. 54 $\frac{1}{4}$
			4,708 50
			May 31. " dvd. 30 Penna....
			37 50
			June 12. " \$30 Penna. sc'p.
			100 $\frac{1}{4}$
			29 90
			Aug. 10. " 30 Penna. 50....
			14,962 25
			Nov. 6. " bal.....
			1,409 96
			58,429 23
Nov. 6.	To bal.....	1,409 96	
Dec. 11.	" int.....	7 16	
			Nov. 13. By \$185 Rdg. 1st sc'p
			39.....
			71 92
			" \$421 75 Rdg. 2d
			sc'p 27.....
			113 34
			" \$239 16 Rdg. 3d
			sc'p 18.....
			42 75
			Dec. 11. " bal.....
			1,189 11
			1,417 12
Dec. 11.	To bal.....	1,189 11	

A. HOWARD RITTER, Executor of the Estate of William M. Runk, }
 Deceased,
 vs.
 MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. }

THURSDAY, April 4, 1895.

Charge of Court.

GENTLEMEN OF THE JURY: This case, as has been said to you, is one of a great deal of importance, one which deserves your very careful attention, and one which can only be decided justly by understanding the law that governs it, and by adhering strictly to the evidence.

As frequently occurs, a great deal of testimony has been heard, and several questions have been raised, which will be found, in the view the court now takes of the case, to be entirely unimportant. I only regret that we could not know at the outset how the case would present itself to our minds at the close, so that we might have avoided the unnecessary expenditure of time and unnecessary taxing of your strength and patience, and devoted ourselves to what now turns out to be the consideration on which the case must be decided.

Counsel for plaintiff have presented to the court several points on which we are asked to charge, for the purpose of getting their view of the law before you. The plaintiff's first, second, and third points are disaffirmed. The fourth is also disaffirmed, for the reasons given in answering the defendant's first point, of which I will speak directly.

The fifth point reads as follows:

"If one whose life is insured intentionally kills himself when his reasoning faculties are so far impaired by insanity that he is unable to understand the moral character of his act, even if he does understand its physical nature, consequence, and effect, such self-destruction will not of itself prevent recovery upon the policies."

This is affirmed. I will say, however, that we must understand what is meant and intended by the term "moral character of his act." It is a point which has been used by the courts, and is correctly inserted in the term; but it is a term which might be misunderstood.

We are not to enter the domain of metaphysics in determining what constitutes insanity, so far as the subject is involved in this case. If Mr. Runk understood what he was doing, and the consequences of his act or acts, to himself as well as to others—in other words, if he understood, as a man of sound mind would, the consequences to follow from his contemplated suicide, to himself, his character, his family, and others, and was able to comprehend the wrongfulness of what he was about to do, as a sane man would—then he

is to be regarded by you as sane. Otherwise he is not.

147 The defendant's first point reads as follows:

"There can be no recovery by the estate of a dead man of

the amount of policies of insurance upon his life, if he takes his own life designedly, whilst of sound mind."

This point is affirmed.

The defendant's first point, which I have just read to you and affirmed, and the plaintiff's fourth point, which I have disaffirmed, raise the same question, and it is one of very great difficulty. It is very remarkable that the question has never been directly passed upon by any court of last resort, nor, so far as has been discovered, by any other, in this country or in England.

When the points were presented I said in your presence that in the absence of authority, or of custom on the part of insurance companies, or in the business of insuring, bearing on the subject, I would feel little hesitation in holding that suicide by the insured, while in a sane condition of mind, constitutes a defence to the payment of the policy; but that I inclined to believe there was authority to the contrary. It is conceded, however, that there is nothing to be found on the subject but dicta, and this is conflicting; and there is no evidence before the court of any custom in the business of insurance bearing on this subject.

I regret that I must pass on the question without opportunity for examination or reflection. It seems to me, however, that every contract of life insurance contains an implied condition that the insured will not intentionally terminate his life, but that the insurer shall have the benefit of the changes of its continuance until terminated in the natural, ordinary course of events. It is on these chances that the premium is calculated and based, and the contract is founded. It cannot be doubted that if one having a policy on his buildings, insuring against fire, should intentionally burn them, his act would be a defense to the policy; nor that one taking a policy on the life of his debtor, whom he subsequently murders, cannot recover the insurance. In principle I am unable to distinguish these cases from that where the insured commits suicide. The fraud on the insurer seems to me to be as clear in the latter case as in either of the others. A different construction of the policy would seem to make it a contract to pay the insurance immediately if the insured commits suicide; thus offering an inducement to commit this act. If the insured lives out the ordinary term of life the time of payment may be very remote, and therefore the inducement to commit suicide is very great if payment follows this event. Of course no insurer would intentionally enter into such a contract; it would be destructive of its interests. His premiums are calculated, and his prospect of gain based on the insured's chances of life under ordinary circumstances; and if the latter may render the insurance payable immediately by committing suicide, the former is completely at his mercy. If, however, an insurer should enter into such a contract, the law would declare it void, because of its violation of public policy. It would seem, in effect, to be a contract to pay money for the commission of suicide.

If suicide results from insanity it is not, in legal contemplation, the intentional act of the insured. What constitutes insanity, in the sense in which we are using the term, has

been described to you, and need not be repeated. If this man understood the consequences and effects of what he was doing or contemplating, to himself and to others, if he understood the wrongfulness of it, as a sane man would, then he was sane, so far as we have occasion to consider the subject, otherwise he was not.

Here the insured committed suicide, and, as the evidence shows, did it for the purpose, as expressed in his communication to the executor of his will, as well as in letters written to his aunt and his partner, of enabling the executor to recover on the policies, and use the money to pay his obligations. I therefore charge you that if he was in a sane condition of mind at the time, as I have described, able to understand the moral character and consequences of his act, his suicide is a defense to this suit.

The only question, therefore, for consideration is this question of sanity. There is nothing else in the case. That he committed suicide, and committed it with a view to the collection of this money from the insurance companies and having it applied to the payment of his obligations, is not controverted, and not convertible. It is shown by his own declaration, possibly not verbal, but written. The only question, therefore, is whether or not he was in a sane condition of mind, or whether his mind was so impaired that he could not, as I have described, properly comprehend and understand the character and consequences of the act he was about to commit.

In the absence of evidence on the subject he must be presumed to have been sane. The presumption of sanity is not overthrown by the act of committing suicide. Suicide may be used as evidence of insanity, but standing alone it is not sufficient to establish it. It is sometimes thoughtlessly said, if a man commits a high crime or takes his life, that he was insane, he was crazy. The fact that a man commits a high crime is not evidence of insanity, and the fact that he takes his life does not of itself overthrow the presumption of sanity. There must be something more than this.

Therefore we start with the presumption of sanity in the defendant's favor, and the burden of showing insanity on the plaintiff.

You have heard the evidence on the subject and the comments of counsel respecting it, and from this you must determine how the question should be decided. I believe the wife and sister alone expressed an opinion that his mind was "unbalanced." Whether either of them formed this opinion before his death I am uncertain. The wife said she did not. If the opinion is based on the fact alone that he committed suicide it is of no value. If it is based on this fact and his previous conduct, condition or conversation, it may and should be considered; its value still is for you.

These witnesses, together with two or three others, and probably more, you will remember, testified to his conversation, his conduct, his nervousness, the change in his appearance, and so on, shortly before his death. You must judge in how far this testimony tends to show an insane condition of mind, such as I have described.

149 Might or might not the natural worry and distress occasioned by his unfortunate circumstances and the contemplation of

self-destruction as a means of relief, account for his conduct and appearance, without the existence of such insanity?

On the other hand, the defendant has called your attention on this subject to the fact that he conducted the business of his firm during his partner's absence and up to within a very short time of his death; and you have seen how methodically he prepared for his end, the letters he wrote, the instructions prepared for his executor, and so on.

Now, from all the evidence on the subject (and your attention has been very fully called to it by counsel, and there need be no repetition of it), you must determine the question of sanity.

While I thus submit the question, and remind you that the responsibility of deciding it rests upon you alone, I consider it a duty to say that I do not regard the evidence on which the plaintiff relies as strong. It may be sufficient; that is a question entirely for you.

If you find him to have been insane, as I have described, your verdict will be for the plaintiff. Otherwise it will be for the defendant.

There is nothing more that I need say. I can render you no further assistance. I will repeat, you must be very careful to guard your minds against the influence of sympathy or prejudice. Each of the parties is entitled to equal consideration at your hands. If you are not guided and controlled by the law as stated by the court, and the evidence as heard here, you will do great wrong to the parties and wrong to yourselves.

(Counsel for plaintiff excepts to the disaffirmance of the first, second and third points submitted on behalf of plaintiff;

Also to the disaffirmance of the fourth point submitted on behalf of plaintiff, and to the answer to defendant's first point;

Also to the answer of the court affirming the fifth point submitted on behalf of plaintiff;

Also to that part of the charge where the court says:

"I therefore charge you that if he was in a sane condition of mind at the time, as I have described, able to understand the moral character and consequences of his act, his suicide is a defense to this suit."

Also to that part of the charge of the court saying that suicide standing alone is not sufficient to establish insanity, and if the opinion is based on that fact alone it is of no value;

Also to that part of the charge where the court says:

"While I thus submit the question, and remind you that the responsibility of deciding it rests upon you alone, I consider it a duty to say that I do not regard the evidence on which the plaintiff relies as strong."

The points submitted on behalf of plaintiff are as follows:

1. The evidence is not sufficient to warrant the jury in finding that the deceased entered into the contracts of insurance evidenced by the policies sued upon with the intention of defrauding the company defendant issuing the same.

2. The evidence is not sufficient to warrant the jury in finding that the deceased entered into the said contracts of insurance with the intention of committing suicide.

3. The evidence upon the part of the defendant does not warrant any inference of fact which constitutes a defense in law to the plaintiff's right to recover the amount due upon the said policies.

4. The mere fact that the insured committed suicide does not, standing alone, avoid the policies, there being no condition to that effect in the policies.

Terry's case, 15 Wall., 586.

5. If one whose life is insured intentionally kills himself when his reasoning faculties are so far impaired by insanity that he is unable to understand the moral character of his act, even if he does understand its physical nature, consequence and effect, such self-destruction will not of itself prevent recovery upon the policies.

JOHN HAMPTON BARNES.

RICHARD C. DALE.

GEORGE TUCKER BISPHAM.

The points submitted on behalf of defendant are as follows:

1. There can be no recovery by the estate of a dead man, of the amount of policies of insurance upon his life, if he takes his own life designedly, whilst of sound mind.

2. If you find that Runk committed suicide when he was of sound mind, being morally and mentally conscious of the act he was about to commit, of its consequences, and of its nature, with the deliberate intent to secure to his estate and to his creditors, the amount of the policies sued upon, there can be no recovery.

3. If you find that Runk obtained the policies of insurance sued upon at a time when he was insolvent and an embezzler, with the intent thereby to secure, in case of his death, from the plaintiff, the fund with which to pay those to whom he was indebted, and whose property he had embezzled; that he subsequently committed suicide, whilst of sound mind, with the deliberate intent to carry out this scheme, there can be no recovery.

4. The defendant is entitled to set off the loss occasioned by the failure of Runk to keep his agreement not to die by his own hand within two years of the date thereof. The amount of this loss cannot be less than that of the policies sued upon.

And thereupon, the counsel for the said plaintiff did then and there except to the aforesaid charge and opinion and answer of the said court, and inasmuch as the said charge and opinion and answers so excepted to do not appear upon the record:

The said counsel for the said plaintiff did then and there tender this bill of exceptions to the opinion of the said court, and 151 requested the seal of the judge aforesaid should be put to the same, according to the form of the statute in such case made and provided. And thereupon the aforesaid judge at the request of the said counsel for the plaintiff did put his seal to this bill of ex-

ception, pursuant to the aforesaid statute in such case made and provided, this 22d day of April, 1895.

WM. BUTLER, J.

Endorsed: No. 51. October term, 1892. In the circuit court of the United States for the eastern district of Pennsylvania. Bill of exceptions. A. Howard Ritter, executor, etc., *vs.* The Mutual Life Insurance Company of New York. Filed April 23, 1895. Samuel Bell, clerk.

In the Circuit Court of the United States for the Eastern District of Pennsylvania.

A. HOWARD RITTER, Executor of the Estate
of William Runk, Deceased, }
vs. } October Sessions, 1892.
THE MUTUAL LIFE INSURANCE COMPANY }
OF NEW YORK. } No. 51.

Assignments of Error.

The plaintiff assigns the following for error:

1. The admission of the evidence of Ralph F. Culinan contained in the following offer:

Mr. JOHNSON: "I propose to prove the date anterior to the issuance of this policy of the appropriation by Mr. Runk of the securities of the city mission in his hands as treasurer."

(Objected to on the ground that the mere proof of indebtedness does not indicate any intention whatever to take one's own life.)

The COURT: "This is one of the circumstances that must be heard. Its value, or whether it really has any value, could not be considered at this time. The court will have to hear it, and reserve for after consideration what weight it should have or whether it should have any. We may be asked to rule it out, and if so, we will consider it."

2. The admission of the evidence of William G. Hopper contained in the following offer:

Mr. JOHNSON: "I propose to prove that this witness is a creditor of the estate to the amount of \$7,756.88, which credit is due to him in the course of speculative stock transactions of William M. Runk, and also to prove the extent of those speculative transactions and the time of their commencement, and that for two or three years anterior to this Mr. Runk was speculating and making and losing largely."

152 3. The refusal of the court to affirm plaintiff's first point, which point was as follows:

"The evidence is not sufficient to warrant the jury in finding that the deceased entered into the contracts of insurance evidenced by the policies sued upon, with the intention of defrauding the company defendant issuing the same."

4. The refusal of the court to affirm plaintiff's second point, which point was as follows:

"The evidence is not sufficient to warrant the jury in finding that the deceased entered into the said contracts of insurance with the intention of committing suicide."

5. The refusal of the court to affirm plaintiff's third point, which point was as follows:

"The evidence upon the part of the defendant does not warrant any inference of fact which constitutes a defence in law to the plaintiff's right to recover the amount due upon the said policies."

6. The refusal of the court to affirm plaintiff's fourth point, which point was as follows:

"The mere fact that the insured committed suicide does not, standing alone, avoid the policies, there being no condition to that effect in the policies."

And the answer thereto as follows:

"The fourth point is also disaffirmed for the reason given in answering the defendant's first point of which I will speak directly."

7. The answer to plaintiff's fifth point, which point and answer are as follows:

"If one whose life is insured, intentionally kills himself when his reasoning faculties are so far impaired by insanity that he is unable to understand the moral character of his act, even if he does understand its physical nature, consequence and effect, such self-destruction will not of itself prevent recovery upon the policies."

This is affirmed. I will say, however, that we must understand what is meant and intended by the term "moral character of his act." It is a term which has been used by the courts and is correctly inserted in the point; but it is a term which might be misunderstood.

We are not to enter the domain of metaphysics in determining what constitutes insanity, so far as the subject is involved in this case. If Mr. Runk understood what he was doing, and the consequences of his act or acts, to himself as well as to others, in other words, if he understood, as a man of sound mind would, the consequences to follow from his contemplated suicide, to himself, his character, his family and others, and was able to comprehend the wrongfulness of what he was about to do, as a sane man would, then he is to be regarded by you as sane. Otherwise he is not.

8. The affirmation by the court of the defendant's first point and the answer to such point which point and answer are as follows:

"There can be no recovery by the estate of a dead man of 153 the amount of policies of insurance upon his life, if he takes his own life designedly, whilst of sound mind."

"This point is affirmed."

The defendant's first point, which I have just read to you and affirmed, and the plaintiff's fourth point, which I have disaffirmed, raise the same question; and it is one of very great difficulty. It is very remarkable that the question has never been directly passed upon by any court of last resort, nor, so far as has been discovered, by any other, in this country or in England.

When the points were presented I said in your presence that, in the absence of authority or of custom on the part of insurance companies or in the business of insuring bearing on the subject, I would feel little hesitation in holding that suicide by the insured, while in a sane condition of mind, constitutes a defence to the payment of the policy; but that I inclined to believe there was authority to the contrary. It is conceded, however, that there is nothing to be found on the subject but dicta, and this is conflicting, and there is no evidence before the court of any custom in the business of insurance bearing on this subject.

I regret that I must pass on the question without opportunity for examination or reflection. It seems to me, however, that every contract of life insurance contains an implied condition that the insured will not intentionally terminate his life, but that the insurer shall have the benefit of the chances of its continuance until terminated in the natural, ordinary course of events. It is on these chances that the premium is calculated and based, and the contract is founded. It cannot be doubted that if one having a policy on his buildings, insuring against fire, should intentionally burn them his act would be a defence to the policy; nor that one taking a policy on the life of his debtor, whom he subsequently murders cannot recover the insurance. In principle I am unable to distinguish these cases from that where the insured commits suicide. The fraud on the insurer seems to me to be as clear in the latter case as in either of the others.

9. The learned court erred in charging the jury as follows:

"I therefore charge you that if he was in a sane condition of mind at the time as I have described, able to understand the moral character and consequences of his act, his suicide is a defence to this suit."

10. The learned court erred in charging the jury as follows:

"If the opinion is based on the fact alone that he committed suicide, it is of no value."

11. The learned court erred in charging the jury as follows:

"While I thus submit the question and remind you that the responsibility of deciding it rests upon you alone, I consider it a duty to say that I do not regard the evidence on which the plaintiff relies as strong."

JOHN HAMPTON BARNES.
RICHARD C. DALE.
GEO. TUCKER BISPHAM.

Know all men by these presents, that we, A. Howard Ritter, executor estate of W. M. Runk, deceased, as principal, and American Surety Company of New York as sureties, are held and firmly bound unto the Mutual Life Insurance Company of New York in the full and just sum of five hundred (500) dollars, to be paid to the said The Mutual Life Insurance — of New York, its certain attorney, executors, administrators, or assigns: to which payment, we

and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this — day of April, in the year of our Lord one thousand eight hundred and ninety-five.

Whereas, lately, at a session of the circuit court of the United States, eastern district of Pennsylvania, in a suit depending in said court, between A. Howard Ritter, executor of the estate of W. M. Runk, deceased, *versus* The Mutual Life Insurance Company of New York, a judgment was rendered against the said A. Howard Ritter, executor, &c., and the said A. Howard Ritter, executor, having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said The Mutual Life Insurance Company of New York citing and admonishing it to be and appear at a United States circuit court of appeals for the third circuit, to be holden at the city of Philadelphia, within thirty days.

Now, the condition of the above obligation is such, that if the said A. Howard Ritter, executor estate of W. M. Runk, deceased, shall prosecute his writ of error to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in presence of—

HENRY L. FOX.

[SEAL.]
[SEAL.]

A. HOWARD RITTER, *Executor.*
AMERICAN SURETY CO. OF
NEW YORK,
By SAMUEL T. FREEMAN,
Vice-President pro Tem.
HENRY L. FOX,
Ass't Secretary pro Tem.

Attest:

Approved by—
WM. BUTLER, JR.

155 Endorsed: No. 51. October session, 1892, C. C. U. S., E. D. of Pa. A. Howard Ritter, executor, &c., *vs.* The Mutual Life Insurance Company of New York. Bonds surwrit of error. Filed April 31, 1895. Samuel Bell, clerk.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, } *set:*

I, Samuel Bell, clerk of the circuit court of the United States of America for the eastern district of Pennsylvania, in the third circuit, do hereby certify the foregoing to be a true and faithful copy of the original pleas and proceedings in the case of A. Howard Ritter, executor, &c., *vs.* The Mutual Life Insurance Company of New York, No. 51, October sessions, 1892, on file and now remaining among the records of the said court in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this eighteenth

day of May, in the year of our Lord one thousand eight hundred and ninety-five, and of the Independence of the United States the one hundred and nineteenth.

[SEAL.]

SAMUEL BELL,
Clerk of C. C.

156 In the United States Circuit Court of Appeals, Third Circuit.

And afterwards, to wit, on the 30th day of September, A. D. 1895, come the parties aforesaid, by their counsel aforesaid, and this cause being called for argument on the transcript of record from the circuit court of the United States for the eastern district of Pennsylvania, before Hon. M. W. Acheson and Hon. George M. Dallas, circuit judges, and Hon. Leonard E. Wales, district judge, and being argued by counsel for the respective parties, and the court, not being fully advised in the premises, takes further time for the consideration thereof.

And afterwards, to wit, on the 2nd day of December, A. D. 1895, come the parties aforesaid, by their counsel aforesaid, and the court, now being fully advised in the premises, file the following opinion, to wit:

157 In the United States Circuit Court of Appeals, Third Circuit.

A. HOWARD RITTER, Executor of the Last Will of William M. Runk, Deceased, Plaintiff in Error, }
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, Defendant in Error. }

Error to the circuit court of the United States for the eastern district of Pennsylvania.

Before Acheson, Dallas, and Wales, JJ.

ACHESON, *Circuit Judge:*

This was an action brought by A. Howard Ritter, executor of the last will of William M. Runk, late of the city of Philadelphia, deceased, against the Mutual Life Insurance Company of New York, upon six policies of insurance, together amounting to the sum of \$75,000.00, all bearing date November 10, 1891, issued by the defendant company to William M. Runk upon his life. On the fifth day of October, 1892, Mr. Runk, with great deliberation, committed suicide by a pistol shot at a time when, as evidence indicates and the jury has found, he was of sound mind and able to understand both the physical and the moral character and consequences of his act of self-destruction. At the time of his suicide Mr. Runk carried insurance upon his life to the amount of \$500,000.00, the policies for which had been issued to him by a number of different companies. When the policies here in suit were taken Mr. Runk

158 already carried upon his life policies of insurance issued by other companies to the amount of \$315,000.00, of which \$135,000.00 had been assigned by him to his aunt, Mrs. Barcroft, as collateral security for moneys he owed her. At the same time that he effected the insurance which is the subject-matter of this suit Mr. Runk took out another policy of insurance upon his life in the defendant company for the benefit of his wife for \$20,000.00. Shortly thereafter, in the month of January, 1892, he took out in his own name additional insurance upon his life to the amount of \$90,000.00 in other companies.

In connection with the facts already stated there was evidence upon the trial of this case tending to show that at the time the policies in suit were taken out Mr. Runk was insolvent; that his entire income did not exceed seven hundred dollars a month, out of which he had to support his family; that theretofore he had been engaged in and thereafter continued to be engaged in stock speculations on a large scale, in which he sustained heavy losses; that he had then begun a system of surreptitious withdrawals (amounting at his death to \$86,000.00) of his contribution of \$100,000.00 to the capital stock of the firm of Darlington, Runk & Co., of which he was a member, in violation of his partnership obligations, and which withdrawals he artfully concealed; and it appeared further that before the date of the policies in suit Mr. Runk had embezzled funds of the Protestant Episcopal city mission, of which he was treasurer, to the amount of about \$80,000.00.

On the day of his death or the day before Mr. Runk wrote a letter to the executor named in his will, Mr. Ritter, giving a particular account of his liabilities and a list of his insurance 159 policies, and directing the application of the insurance moneys to his indebtedness. This letter and also other letters in evidence written by Mr. Runk just before he shot himself clearly evince that he deliberately committed suicide with the intention and in order that the insurance he had effected on his life might be collected by his executor and applied to the payment of his liabilities.

As the case went to the jury the only question of fact submitted to that tribunal was the question of the testator's sanity at the time he took his life. Nevertheless, error is assigned to the refusal of the court to affirm the plaintiff's first and second points, namely:

"1. The evidence is not sufficient to warrant the jury in finding that the deceased entered into the contracts of insurance evidenced by the policies sued upon with the intention of defrauding the company defendant issuing the same. 2. The evidence is not sufficient to warrant the jury in finding that the deceased entered into the said contracts of insurance with the intention of committing suicide."

The assignments of error under this head raise the question whether there was any evidence in the cause which would have justified the jury in finding that the policies in suit had been taken out by William M. Runk with the fraudulent purpose of ending his life by his own hand. We think that there was such evidence and

that the affirmation of the above-quoted points would have been erroneous. True, it was not shown by the declarations of the insured or by other like positive evidence that at the time he effected the insurance he had formed the purpose to take his life. But such direct evidence of dishonest intention is rarely obtainable. Fraudulent intention is seldom openly avowed, and ordinarily its existence must be deduced from the circumstances surrounding the particular transaction, apparent motive, and conduct before and after the event. Here we have a man, heavily in debt and insolvent, who had unlawfully appropriated to his own use trust funds, and was in constant danger of exposure, who had plunged into hazardous stock speculations, and who was already carrying an unusually large amount of life insurance, his income being grossly inadequate to pay the accruing premiums on that insurance and maintain his family. In the desperate state of affairs this man takes out additional life insurance, amounting (with the policy in favor of his wife) to the large sum of \$95,000.00, which he knew he could not maintain for any great length of time. Then, about two months later, we find him still further increasing his life insurance by other policies to the amount of \$90,000.00. Nine months thereafter, when in a sane condition of mind, he takes his life, with the expressed purpose of enabling his estate to realize upon his life policies, leaving specific written directions to his executor how to apply the insurance moneys in discharge of his liabilities. It is indeed the fact that Mr. Runk's suicide followed immediately after certain irregularities in his conduct of the business of Darlington, Runk & Co. had been detected and when full exposure of his misconduct was imminent. Still, however, it was for a jury to determine under all the circumstances when Mr. Runk first formed the design to take his life, and the evidence, we think, would have well warranted the finding that at the time he took out the policies in suit he was preparing for the worst, and that he then contemplated and had determined upon self-destruction should his stock speculations fail him in the near future. We are not, then, able to sustain any of the assignments of error upon this branch of the case.

The plaintiff's fourth point was in these words: "4. The mere fact that the insured committed suicide does not, standing alone, avoid the policies, there being no condition to that effect in the policies." The defendant's first point was as follows: "1. There can be no recovery by the estate of a dead man of the amount of policies of insurance upon his life if he takes his own life designedly whilst of sound mind." The plaintiff's fourth point was refused and the defendant's first point was affirmed, and the court charged the jury that if the insured, Mr. Runk, was in a sane condition of mind at the time of his self-destruction his suicide was a defence to this suit. These instructions are assigned for error, and the assignments raise the question whether the personal representative of one who, when sane, deliberately kills himself with the intent to secure to his estate the amount of insurance he has effected upon his life can recover the insurance money, the policy containing no provision with respect to suicide.

It is conceded that this precise question was not involved or decided in any case prior to the present one. In the cases brought to our attention where suicide, during sanity, by the person whose life was insured was held not to be a valid defense the policy was issued for the benefit of some other person or an independent interest, by assignment or otherwise, had been acquired by a third person. Not one of the decisions, we think, gives countenance to the idea that the personal representatives of the insured can recover where

162 the latter, whilst sane, deliberately commits suicide for the purpose of compelling payment of the insurance money to

his estate. That there can be no recovery in such case has been asserted by courts and judges whose expressions of opinion command great respect. In *Moore v. Woolsey*, 4 El. & Bl., 243, 254, Lord Campbell said: "If a man insures his life for a year and commits suicide within the year his executors cannot recover upon the policy, as the owner of a ship who insures her for a year cannot recover upon the policy if within the year he causes her to be sunk; a stipulation that, in either case, upon such an event, the policy should give a right of action, would be void." In *Hartman v. Keystone Insurance Company*, 21 Pa., 466, 479, it was said: "Besides this, the court was very plainly right in charging that if no such condition had been inserted in the policy a man who commits suicide is guilty of such a fraud upon the insurers of his life that his representatives cannot recover for that reason alone." This observation has been criticized, and, standing by itself, it may appear to be too sweeping. Hartman's case, however, did not involve any question of insanity, and the court was speaking of suicide by a sane man. In *Supreme Commandery, &c., v. Ainsworth*, 71 Ala., 436, 447, the court said: "Death, the risk of life insurance, the event upon which insurance money is payable, is certain of occurrence. The uncertainty of the time of its occurrence is the material element and consideration of the contract. It cannot be in the contemplation of the parties that the assured by his own criminal act shall deprive the contract of its material element; shall vary and enlarge the risk and hasten the day of payment of the insurance money."

163 The above-quoted views, as applied to suicide by a sane man who kills himself to the end that his estate shall thereby be benefited by the enforcement of a policy of insurance on his life, are, we think, just and sustained by the soundest reason. It is a fundamental condition of the contract of life insurance, even if the policy be silent on the subject, that the insured, while in a sound mental condition, will not voluntarily destroy his life. The contract would lack mutuality of obligation if the insured at his own pleasure, by intentional self-destruction, could terminate the payment of the stipulated premiums and precipitate the payment of the sum insured. To sanction a recovery in such a case would be to reward fraud and encourage wrong-doing. In *New York Mutual Life Insurance Company v. Armstrong*, 117 U. S., 591, 600, Mr. Justice Field said:

"It would be a reproach to the jurisprudence of the country if one could recover insurance money payable on the death of a party

whose life he had feloniously taken. As well might he recover insurance money upon a building that he had wilfully fired." There is, it seems to us, in principle no distinction between the instance thus put by Judge Field and the case now before us. It is conceded that if at the time a policy of life insurance is obtained the insured has formed the purpose of ending his life, his suicide would defeat a recovery. But what difference does it make when such purpose is conceived? Wilful self-destruction by the insured when he is sane is equally a fraud upon the insurer whether the purpose to commit the act is formed before or after the policy is taken. In our judgment the rulings of the court below upon the subject were right.

164 The remaining assignments of error relate to the instructions of the court as to what constitutes that degree of mental unsoundness which will relieve against what otherwise would be the consequence of self-destruction. Here it seems to be proper to cite at length the plaintiff's fifth point and the answer thereto and the accompanying observations made by the court. These were as follows: "5. If one whose life is insured intentionally kills himself when his reasoning faculties are so far impaired by insanity that he is unable to understand the moral character of his act, even if he does understand its physical nature, consequence, and effect, such self-destruction will not of itself prevent recovery upon the policies."

"This is affirmed. I will say, however, that we must understand what is meant and intended by the term 'moral character of his act.' It is a term which has been used by the courts, and is correctly inserted in the point, but it is a term which might be misunderstood.

"We are not to enter the domain of metaphysics in determining what constitutes insanity, so far as the subject is involved in this case. If Mr. Runk understood what he was doing and the consequences of his act or acts to himself as well as to others—in other words, if he understood, as a man of sound mind would, the consequences to follow from his contemplated suicide to himself, his character, his family, and others, and was able to comprehend the wrongfulness of what he was about to do, as a sane man would—then he is to be regarded by you as sane. Otherwise, he is not."

In a subsequent part of the charge the court said: "I therefore charge you that if he was in a sane condition of mind at the 165 time, as I have described, able to understand the moral character and consequences of his act, his suicide is a defense to this suit."

We are not able to discover in these instructions anything on which the plaintiff in error can justly complain. The explanatory remarks which the learned judge made in connection with his signature of the plaintiff's fifth point were pertinent and proper. Upon the question of insanity the jury was plainly informed that to prevent a recovery it was not enough that Mr. Runk understood the physical nature, consequence, and effect of his act of self-destruction, but that he must also have understood the moral character

and consequences of the act, and that if he did not comprehend its wrongfulness he was to be regarded by the jury as insane; nor were the instructions of the court inadequate to the facts of the case. We think that they fully covered the question of insanity here involved. We do not perceive that in the instructions complained of there was any departure from the principles approved by the Supreme Court in the cases of *Life Insurance Company v. Terry*, 15 Wall., 580; *Insurance Company v. Rodel*, 95 U. S., 232; *Manhattan Life Insurance Company v. Broughton*, 109 U. S., 121, and *Connecticut Mutual Life Insurance Company v. Akens*, 150 U. S., 468. The charge, we think, conformed to the rulings in those cases.

We are of the opinion that this record discloses no error, and the judgment of the circuit court is affirmed.

Filed December 2nd, 1895.

166 United States Circuit Court of Appeals, Third Circuit, September Term, 1895.

A. HOWARD RITTER, Executor of the Estate of Wm. M. Runk, Deceased, Plaintiff in Error, *v.* THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK. } No. 2.

In error to the circuit court of the United States for the eastern district of Pennsylvania.

This cause came on to be heard on the transcript of record from the circuit court of the United States for the eastern district of Pennsylvania and was argued by counsel.

On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said circuit court in this cause be, and the same is hereby, affirmed with costs.

December 3, 1895.

GEO. M. DALLAS, *Cir. Judge.*

167 UNITED STATES OF AMERICA, *scit.*:

I, William V. Williamson, clerk of the United States circuit court of appeals for the third circuit, do hereby certify the foregoing pages, from one to one hundred and —, inclusive, to contain a full, true, complete, and faithful copy of the original transcript of record in the case of A. Howard Ritter, executor of the estate of Wm. M. Runk, deceased, plaintiff in error, *v.* The Mutual Life Insurance Company of New York, on file and now remaining among the records of the said court in my office.

In testimony whereof I have hereunto subscribed my name and

Seal United States Circuit Court of Appeals, Third Circuit.

affixed the seal of the said court, at Philadelphia, this sixth day of March, in the year of our Lord one thousand eight hundred and ninety-six, and of the Independence of the United States the one hundred and twentieth.

WM. V. WILLIAMSON,
Clerk U. S. Circuit Court of Appeals, Third Circuit.

168 UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the third circuit, Greeting:

Being informed that there is now pending before you a suit in which A. Howard Ritter, executor of William M. Runk, deceased, is plaintiff in error and The Mutual Life Insurance Company of New York is defendant in error, which suit was removed into the said circuit court of appeals by virtue of a writ of error to the circuit court of the United States for the eastern district of Pennsylvania, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court as aforesaid the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 25th day of March, in the year of our Lord one thousand eight hundred and ninety-six.

JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

170 [Endorsed:] Supreme Court of the United States. No. 924. October term, 1895. A. Howard Ritter, executor, &c., vs. The Mutual Life Ins. Co. of New York. Writ of certiorari.

171 In the United States Circuit Court of Appeals for the Third Circuit.

A. HOWARD RITTER, Executor of the Estate of William M. Runk, Deceased, Plaintiff in Error,

vs.

MUTUAL LIFE INSURANCE COMPANY OF NEW YORK.

September Term, 1895. No. 2.

It is hereby stipulated that the certified copy of the transcript of record in the above case, now on file in the Supreme Court of the United States, shall be taken as a return to the writ of certiorari

issuing out of the said Supreme Court of the United States, directing that the said record be certified by the said circuit court of appeals and removed into the Supreme Court of the United States.

JOHN HAMPTON BARNES,
R. C. DALE,
GEO. TUCKER BISPHAM,
Attorneys for Plaintiff.
JOHN G. JOHNSON,
C. P. SHERMAN,
Attorneys for Defendant.

March 26, 1896.

(Endorsed:) No. 2. September term, 1895. U. S. circuit court of appeals for the third circuit. Ritter, ex'r, *vs.* Insurance Company. Stipulation as to record for return of certiorari to U. S. Supreme Court. Barnes, Dale, Bispham. Filed March 28th, 1896. Wm. V. Williamson, clerk.

172 UNITED STATES OF AMERICA, *scilicet*:

I, William V. Williamson, clerk of the United States circuit court of appeals for the third circuit, by virtue of the foregoing writ of certiorari and in obedience thereto, do hereby certify to the Supreme Court of the United States the consent of the counsel for the respective parties thereto annexed as my return to the said writ.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this seventh day of April, in the year of our Lord one thousand eight hundred and ninety-six, and of the Independence of the United States the one hundred and twentieth.

WM. V. WILLIAMSON,
Clerk U. S. Circuit Court of Appeals, Third Circuit.

173 [Endorsed:] No. 2. September term, 1895. United States circuit court of appeals, third circuit. A. Howard Ritter, executor of the estate of Wm. M. Runk, deceased, plaintiff in error, *vs.* Mutual Life Insurance Co. of New York. Certified copy of consent of counsel as to return of writ of certiorari.

174 [Endorsed:] Case No. 16,214. Supreme Court U. S., October term, 1897. Term No., 142. A. Howard Ritter, executor, &c., P. E., *vs.* The Mutual Life Ins. Co. of N. Y. Writ of certiorari and return. Filed April 8, 1896.

Supreme Court of the United States

**EX PARTE A. HOWARD RITTER, EXECUTOR
OF THE ESTATE OF WILLIAM M.
KUNK, DECEASED**

Petition for a writ of certiorari requiring the Circuit Court of Appeals for the Third Circuit to certify to the Supreme Court of the United States for its revision and determination the writ of error taken by A. Howard Ritter, executor of William M. Kunk, deceased, a resident of the State of Pennsylvania, plaintiff in error, vs. The Mutual Life Insurance Company of New York, a corporation of the State of New York.

JOHN HAMPTON BARNES,
RICHARD C. DALE,
GEO. TUCKER BISPHAM,
For Petitioners.

IN THE SUPREME COURT OF THE UNITED
STATES.

October Term, 1895. No. .

EX PARTE A. HOWARD RITTER, EXECUTOR OF
THE ESTATE OF WILLIAM M. RUNK, DECEASED.

Petition for a writ of *certiorari* requiring the Circuit Court of Appeals for the Third Circuit to certify to the Supreme Court of the United States for its revision and determination the writ of error taken by A. Howard Ritter, executor of William M. Runk, deceased, a resident of the State of Pennsylvania, plaintiff in error, *vs.* The Mutual Life Insurance Company of New York, a corporation of the State of New York.

TO THE HONORABLE THE SUPREME COURT OF THE UNITED STATES:

The petitioner of A. Howard Ritter respectfully represents:—

That he is the executor of William M. Runk, deceased, and a resident of the State of Pennsylvania. The defendant in error is the Mutual Life Insurance Company of New York. An action was brought by the petitioner in the Circuit Court of the United States for the Eastern District of Pennsylvania upon certain policies of insurance upon the life of William M. Runk issued by the said Mutual Life Insurance Company of New York.

At the trial of the case in the Circuit Court it appeared that William M. Runk had, upon the fifth day of October, 1892,

committed suicide. The defendant, the insurance company, refused to pay the amount of the policies. There was no provision in any of the said policies in regard to suicide of the insured.

At the trial of the case the court affirmed a point submitted by the defendant, as follows:—

“There can be no recovery by the estate of a dead man of the amount of policies of insurance upon his life if he takes his own life designedly whilst of a sound mind.”

There were certain other defenses made by the defendant; but even if the jury had found against the defendant upon the ground set up therein, it would still have been compelled by the instruction of the court as above stated to find a verdict for the defendant.

This instruction of the Circuit Court was affirmed in the opinion filed in the Circuit Court of Appeals, to the effect that mere suicide of the insured, where there is no provision in the policy in regard thereto, is of itself a sufficient defense upon any action brought upon the policy by the representatives of the deceased.

It was conceded at the trial of the case and in the argument, and in the opinion filed by the Court of Appeals, that this precise question had not been decided in any case prior to this case.

Just at the time of the decision in this case by the Court of Appeals the decision was published in the case of the *Ætna Life Insurance Company vs. Florida*, in the Circuit Court of Appeals for the Eighth Circuit, reported in vol. LXIX., Fed. Rep., page 932. In that case a statute of Missouri providing that suicide should not be a defense to any action upon a policy of insurance unless the same were taken out in contemplation of suicide, was sustained. It therefore follows that the Circuit Court of Appeals for the Third Circuit having decided that suicide of itself is a fraud, a contract providing that suicide should not vitiate the policy would, in the judgment of that court, be against public policy, while the Circuit Court of Appeals for the Eighth Circuit has sustained a statute creating a defense based upon a precisely opposite conclusion

Your petitioner files herewith, as required by rule 37, a certified copy of the entire record of the case in the Circuit Court of Appeals, and respectfully shows to your Honorable Court that the question involved is one of such gravity and importance as to justify to your Honorable Court an application to require the record of the said proceeding to be certified to the Supreme Court for its review and determination.

The question is one of general public interest, and of the greatest possible importance throughout the Union. It has never been decided by this court. In the present conflict of authority there exists an uncertainty touching the proper interpretation of one of the most important and most common contracts into which the citizens of this country enter. It is of vital consequence to the entire community of these United States that the law upon this subject should be definitely settled by the highest authority.

UNITED STATES OF AMERICA, } ss.
ESTERN DISTRICT OF PENNSYLVANIA, }

This day personally appeared before me, a United States Commissioner for the Eastern District of Pennsylvania, A. Howard Ritter, plaintiff below, and plaintiff in error in the Circuit Court of Appeals for the Third Circuit in the above-entitled cause, and having been duly sworn, did depose and say that he has read the foregoing petition, and that the facts therein stated are true to the best of his knowledge, information, and belief.

Sworn and subscribed to before me, this day of January, 1896.

[SEAL]

*United States Commissioner for the Eastern
District of Pennsylvania.*

BRIEF OF ARGUMENT IN SUPPORT OF PETITION.

The question raised by the record is whether a policy of insurance taken out for the benefit of the estate of the insured, with no clause or condition limiting the obligation of the company to pay if the insured commits suicide, is avoided by the fact that the insured commits suicide under the pressure of subsequently-occurring misfortunes.

The learned judge who tried the case correctly stated that this precise question has never heretofore arisen and been decided in any court, but in a leading case, in which the question did not directly arise upon the record, the Supreme Court of the United States has expressed the opinion that suicide, without a condition or clause so providing, does not avoid a policy of life insurance, and expressed their disapprova of a dictum of Chief Justice Black while in the Supreme Court of Pennsylvania which seems to support the other view. It is to be noted, however, that the language of Chief Justice Black was predicated of a case where the insured committed suicide within twenty-four hours after effecting the policy of insurance by taking arsenic purchased on the same trip into the city of Harrisburg during which his policy was taken out. All the circumstances of the case indicated a purpose to commit suicide formed prior to the making of the contract, in which case no one doubts that the contract is tainted with fraud in its inception, and it was upon this state of facts, and upon a policy which was by its expressed terms void if the deceased died by his own hand, that in *Hartman vs. Keystone Ins. Company*, 21 Pa. St., 466, Black, C. J., said:—

"The conditions of the policy are that it shall be null and void 'if the assured shall die by his own hand, in or in consequence of a duel or by the hands of justice,' &c. The plaintiff argues that the first clause here quoted does not embrace suicide committed in swallowing arsenic. Where parties have put their contract in writing their rights are fixed by it. But the contract is what they meant it to be, and when we can ascertain their meaning from the words they have used, we must give it effect. One rule of interpretation is, that we must never attribute an absurd intent if a sensible one can be extracted from the writing. No absurdity could be greater

than a stipulation against suicide in a duel. The words 'die by his own hand' must therefore be disconnected from those which follow. Standing alone, they mean any sort of suicide.

"Besides this, the court was very plainly right in charging that if no such condition had been inserted in the policy, a man who commits suicide is guilty of such a fraud upon the insurers of his life that his representatives cannot recover for that reason alone."

The report of the case does not give the charge of Judge Pearson in the court below, but it may be assumed that the charge was given in connection with the undisputed facts of the case, which necessitated the conclusion that the suicide was simply the carrying out of the preconceived fraudulent intent with which the policy was procured. And this case (*Hartman vs. Insurance Company*) has not been followed by the Supreme Court in any case in Pennsylvania, but, on the contrary, has been expressly limited in the only case in which the subject was touched upon. *American Life Insurance Co. vs. Isett's Admrs.*, 74 Pa., 176 (1873). "The case of Hartman *vs. Insurance Company* is not in conflict with the charge of the court. It merely holds if the insured committed suicide by swallowing poison he died by his own hand. It does not profess to hold that self destruction by the insured in all cases avoids the policy."

In *Life Insurance Company vs. Terry*, 15 Wallace, 580, which was the leading case in which the Supreme Court repudiated the English rule of *Borradaile vs. Hunter*, and held that even if the policy contained a clause against suicide or death by his own hand, such clause did not apply if the insured was insane, Mr. Justice Hunt thus criticises the language of Judge Black, above quoted:—

"In *Hartman vs. Keystone Insurance Company*, the doctrine of *Borradaile vs. Hunter* was adopted with the confessedly unsound addition that suicide would avoid a policy although there were no condition to that effect in the policy."

The plaintiff in error is therefore justified in asserting that upon the question raised by the petition this court has already stated its understanding of the law in accordance with the view for which we contend, and its disapproval of the expressions of Chief Justice Black as an unsound

addition to the rule even as adopted in the English courts. Until, therefore, the supreme tribunal shall modify its statement of the law as thus announced in Terry's case, the Federal courts will regard themselves bound by such statement, even though individual judges, if the question were a new one, might entertain different opinions. We believe, however, that the rule as stated by Mr. Justice Hunt in Terry's case to be in accordance with the true view of the nature of the contract; with the practice of insurance offices; and with the rule adopted in a large number of cases which, while they may not raise the precise question before the court, are not distinguishable in principle.

In *Darrow vs. Family Fund Society*, 116 N. Y., 542, the court said:—

"It was alleged as a defense that the defendant offered to prove on the trial that the member, Darrow, died from the effects of poison taken by him, and which was administered by him with the intent to take his own life. The evidence was excluded, and exception taken. The fact that he committed suicide was no defense unless it came within some condition of the contract of insurance relieving the defendant from liability in such case."

The court then proceeded to consider whether the suicide came within a clause that the policy—

"Should be void if the member shall die in violation of or attempting to violate any criminal law of the United States or of any State or county in which the member herein named may be," saying:—

"It must for the purpose of the question here be assumed that Darrow had the purpose of taking his own life, and that he fully accomplished such purpose. The result of his act, influenced by such intent, then was his death. By the act of taking his own life he violated no criminal law, unless the attempt to do it may be distinguished from the act accomplished. An act is characterized by the purpose, when ascertained, of the party doing it or by its result. If the act fails to accomplish its purpose it constitutes an attempt, but if the result of it is the consummation of the purpose, the act is not commonly designated as an attempt. The common acceptation of terms used, and which do not necessarily have

a technical meaning, is entitled to some consideration in the construction of contracts where the intention of the parties is sought for, as it must be in the language employed. For the purpose of upholding the contract of insurance its provisions will be strictly construed as against the insurer.

"The conclusion is that the death of the member by suicide did not, within the meaning of any provision of the policy, render it for that reason void, and therefore the exclusion of the evidence upon that subject was not error. No other question requires the expression of consideration."

See also following the above case *Meachem vs. The Assn.*, 120 N. Y., page 237.

In *Kerr vs. Minnesota Mutual Benefit Association*, 39 Minn., 174, the policy of insurance provided:—

"If the assured shall die in or in consequence of the violation of any criminal law of any country, State, or Territory in which the assured may be, this certificate shall be null and void."

It was held that suicide committed by an alleged fugitive from justice to avoid arrest and trial for a crime committed by the assured, is not to be considered as the proximate result of the alleged crime, and that his death by suicide is not within the proper meaning of the policy to be considered as the violation of law therein referred to. The court further said:—

"In the law of insurance suicide is not, as a rule, recognized as a ground of exemption from liability, or for the forfeiture of a policy issued for the benefit of a third person, unless it is expressly so provided in the policy."

In *Mills vs. Rebstock*, 29 Minn., 380, the constitution and by-laws of a mutual benefit association organized to secure the benefit of life insurance to the heirs of deceased members on the death-assessment plan, and which issues no policies, stand in the place of a policy, and where such constitution and by-laws contain no provision qualifying the right of recovery in case of suicide, the heirs of a member are entitled to recover the amount stipulated, irrespective of the mode of his death.

In Northwestern Association *vs.* Wanner, 24 Ill. App. Court Rep., 357, a policy having been issued by a mutual association without a suicide clause, it was held that it was not competent for the association, by a subsequent by-law, to exempt itself from liability in case of suicide.

In Cook on Life Insurance, section 41, the effect of self destruction, when not provided against in the policy, is stated as follows :—

" If the performance by the insurer is, in general terms, conditioned on the death of the insured, there seems no valid reason why death by committing suicide should not be included, and such is the general doctrine. *A fortiori* is this true of self destruction by an insane person, but this rule is subject to the reasonable limitation that one effecting insurance with intent to commit suicide, the committing of suicide in pursuance of such intent is guilty of fraud that will avoid the contract, even though it contain no provision as to suicide. Contracts of insurance have very commonly contained provisions excepting from the risk death by suicide."

In ruling upon this question in the court below, the learned judge said to the jury :—

" I regret that I must pass on this question without opportunity for examination or reflection. It seems to me, however, that every contract of life insurance contains an implied condition that the insured will not intentionally terminate his life, but that the insurer shall have the benefit of the *chances* of its continuance until terminated in the natural, ordinary course of events. *It is on these chances that the premium is calculated and based and the contract is founded.*"

There was no evidence in the cause which enabled the court to make this statement of fact, and in the absence of direct evidence as to the manner in which the mortality tables are prepared, it might be urged that there is reversible error in such a statement of a supposed fact; but if it be assumed that a court is entitled to refer to the manner of preparing the mortality tables as a matter of general knowledge without direct evidence, then the court was mistaken in its statement, because, in fact, it is a matter of general knowledge that the mortality tables upon which the premium is calculated and

based and the contract is founded include all deaths, including those of suicides, and this fact has been judicially noticed.

In *Estabrook vs. Union Mutual L. I. Co.*, 54 Maine, 224, Appleton, C. J., said:—

“There is, indeed, no reason why it [the policy] should not do so [cover this as well as every other risk], for the general tables of mortality, which form the basis of the calculations upon which the policy is founded, include this [suicide] as well as every other cause of death; so that the particular risk is actually insured against.”

And Bliss on Life Insurance, section 239, in commenting upon the insufficiency of the usual express clauses exempting the company from liability in cases of suicide, says:—

“If the companies continue to think it important to except from losses insured against any kind of self destruction, we believe they must make some such change in the terms of the exception inserted in their policies. The question of the propriety of any such exception is not a legal one. [The change suggested in the preceding section is clause giving to the insured in case of suicide the net reserve value.] It may be observed, however, that the argument sometimes used, that the mathematical calculations of the life insurance companies upon which their premiums are reckoned are based upon the ascertained deaths from all causes, and that therefore liability to death by self destruction is included mathematically in their premiums, would apply with equal force against the exception as to death by the hands of justice, in a duel, or in violation of law.”

In *Breasted vs. Farmers' Loan and Trust Company*, 4 Hill (N. Y.), 73, the court said:—

“It must occur to every prudent man seeking to make provision for his family by an insurance on his life, that insanity is one of the diseases that may terminate his being. It is said the defendants did not insure the continuance of the intestate's reason, nor did they in terms insure him against smallpox or scarlet fever; but had he died of either disease there is no doubt that the defendants would have been liable. They insure the continuance of life. What difference can it make to them or to him whether it is terminated by the ordinary course of disease in his bed or in a fit of delirium he ends it himself? In each case the death is occasioned by means in the meaning of the policy.”

We submit that these quotations show that the reason given without evidence by the learned court upon supposed

conditions of fact was erroneous, and the second reason, which was one of legal analogy, stands upon no surer foundation.

The second reason given in the charge why there could be no recovery in case of suicide, was :—

"It cannot be doubted that if one having a policy on his buildings insuring against fire should intentionally burn them, his act would be a defense to the policy; nor that one taking a policy on the life of his debtor, whom he subsequently murders, cannot recover the insurance. In principle I am unable to distinguish these cases from that where the insured commits suicide. The fraud on the insured seems to me to be as clear in the latter case as in either of the others."

We do not question that in the cases mentioned, of arson and murder, no insurance could be recovered. We think, however, that although the court below, in the hurry of the trial, failed to distinguish the present case from that of the creditor who murders his debtor upon whose life an insurance is held, that the cases are plainly distinguishable. Confusion often arises in life insurance matters from the paucity of language. The party whose life is insured is spoken of as the "insured;" so also the party who is beneficially interested in the payment of the insurance is spoken of as the "insured." There is no analogy between the relations of the parties.

It would be so contrary to conscience that he who is personally to enjoy the proceeds of a life insurance policy should accelerate the time of such enjoyment by the commission of the high crime of murder, that the law takes to itself the power of a chancellor and prevents the wrongdoer from enjoying the fruit of his crime. As was said by Mr. Justice Field, in *Armstrong vs. Mutual Life Insurance Company*, 117 U. S., 591 :—

"It would be a reproach to the jurisprudence of the country if one could recover insurance money payable on the death of a party whose life he had feloniously taken. As well might he recover insurance money upon a building that he had wilfully fired."

But he whose life is insured has no beneficial or enjoyable interest to the proceeds of the life policy. The contract by

the insurance company is to pay a certain sum upon the termination of the life insured. The payment, by the terms of the policy, may be directed to any one who is interested in the continuance of the life, either relative or creditor, or it may be payable to executors and administrators, to be by them applied for the benefit of creditors and relatives as their interest may be established by law.

Hence it has become the practice of the English companies to provide expressly that if the policy be made payable or be assigned to a creditor or relative, the suicide of the one whose life is insured shall not relieve the company from liability to make payment, and the same conditions expressly protects the payment of the policy in favor of any one who has by charge or lien acquired an interest therein.

In several American cases it has been held that in an action by a beneficiary named in a life policy containing no suicide clause, the suicide of the party upon whose life the policy issued is no defense.

In the absence of a statute declaring what is public policy, or of a condition in a contract limiting its operation, it is not the function of a court to declare contracts void because of supposed public policy.

The proper limitations upon judicial power are very clearly stated in the recent opinion in Carpenter's Estate, 36 Weekly Notes, 516, where the question was whether a son convicted of murdering his father was entitled to share in the distribution of the estate under the intestate laws. The court held that he was.

In *Cleaver vs. Mutual Reserve Fund Life Asso.*, 1 Queen's Bench, 147, the English Court of Appeals held:—

"The executors of a person who has effected an insurance on his life for the benefit of his wife can maintain an action on the policy, notwithstanding the fact that the death of the deceased was caused by the felonious act of the wife. The trust created by the policy in favor of the wife, under the Married Women's Property Act, 1882, section 11, having become incapable of being performed by reason of her crime, the insurance money forms part of the estate of the insured, and as between his legal representatives and the insurers no question of public policy arises to afford a defense to the action."

Fitch *vs.* American Popular Ins. Co., 59 N. Y., 557, was a suit by a widow, to whom the policy by its terms was made payable.

Rapallo, J., said :—

These policies are provisions made usually by persons of slender means for the benefit of their families in case of death. They sometimes devote their small savings for many successive years to paying the premiums. * * *

"The refusals to charge as requested are covered by the remarks already made, and this disposes of all the material exceptions except the rejection of evidence that Fitch, the deceased, committed suicide.

"The policy contained no stipulation that it would be void in case of the death of the insured by suicide. It was not taken out for the benefit of Fitch, but of his wife and children, although they were bound by his representations, and any fraud he may have committed in taking out the policy, the policy having been secured through his agency, yet they were not bound by any acts or declarations done or made by him after the issue of the policy, unless such acts were done in violation of some condition of the policy. We have examined the various grounds upon which the defendant claims that this evidence was admissible, but are of opinion that they are not sufficient."

Patrick *vs.* Excelsior Life Insurance Company, 67 Barb., 202.

This was an action on a life policy issued for the benefit of the insured's wife. The policy did not contain any clause making it void in case of the suicide of the insured. The court said :—

"The case of Fitch *vs.* The Insurance Company, 59 N. Y., 557, has settled the doctrine that in the case of a policy for the benefit of the wife, the suicide of the insured is not a defense where there is no stipulation to that effect in the policy. This doctrine makes the question of sanity or insanity immaterial in this case, and disposes of most of the points raised by the defendants, for I do not think that the expression 'in known violation of the law of any State,' can be construed to include suicide, although suicide has been called a felony."

That no public policy prevents recovery on a policy of insurance the proceeds of which are to be used for the payment

of the debts of the insured, is shown by *Moore vs. Woolsey*, 4 Ellis & B., 243, and *Jones vs. Consolidated Investment Ass. Co.*, 26 Beav., 256.

The only difference between the English cases and the present case is that the assured there by deed had charged the proceeds of the policy with the payment of debts. In Pennsylvania, by virtue of the statute, the proceeds pass into the hands of the executor or administrator charged with the payment of the debts.

There can be no policy of law which renders the contract of insurance void in the one case which does not apply equally to the other.

In *Jones vs. Consolidated Investment Ass. Co.*, 26 Beav., 256, before Romilly, M. R.:-

"One of the conditions of a life policy was that it should be void if the assured died by his own hand, except it should have been assigned to other parties for valuable consideration six months before his death. *Held*, that a letter to A. B., charging it with a floating balance due to him and made three years previous to the death of the assured by his own hand, was within the exception."

In *White vs. British Empire Life Ass. Co.*, L. R., 7 Eq., 194, an assurance company advanced money to W. on a mortgage of real security, and on his effecting a policy on his life in their office for the amount of the loan, which was deposited with the company as collateral security. The policy contained a condition that if the assured died by his own hands, by the hands of justice, or by dueling, the policy should be void, except to the extent of any *bona fide* interest therein which at the time of such death should be vested in any other person or persons for a sufficient pecuniary or other consideration. W. committed suicide under temporary insanity while the policy was in the hands of the company. *Held*, that the company and the assured stood in the same position as if the policy had been mortgaged to any third person; that the company came within the exception in the condition, and therefore that the policy was valid to the extent of the mortgage debt due to them at the death of the insured.

Sir R. Malins, V. C. :—

" It is agreed on both sides, that in the events which have happened, if Mr. White had retained the policy in his own hands it would have been void ; and that if it had been deposited for value in the hands of any third person it would have been valid to the extent of any *bona fide* interest in such third person ; and the question is, whether the assurance company, having advanced money to the assured and taken a deposit of the policy as a collateral security, the company must be considered as other persons who have acquired an interest in the policy ?

" In the case of *Solicitors' and General Life Assurance Company vs. Lamb*, there was a clause very similar to the one upon which the question arises in this case, and the question as to the nature and effect of such a clause was raised both before Vice-Chancellor Wood and the Lords Justices ; and Vice-Chancellor Wood laid down the rule, which I think is the true rule, that such a condition is for the benefit, not of the office, but of the assured. The Vice-Chancellor said : ' The object of the condition is to increase the value of the policy to the holder, *i. e.*, in the first place, to the assured. And if that be so, I do not see how I can hold that in the absence of fraud the estate of the assured is to be deprived of the benefit intended to be given to him by the exception, merely because the mortgagee happens to be fully secured.' The same rule was adopted by the Lords Justices, who held that the condition was intended for the benefit of the assured in order to render the policy an available security.

" This condition, then, being for the benefit of the assured, and it being admitted that if he had deposited it for value with an indifferent person it would have been valid to the amount of such interest, why should the assured be in a less favorable position because the assurance company have themselves advanced him money, and taken it as a security ? If the company desired that under these circumstances the assured should be in a less favorable position than if he had borrowed from a third person, they might have stipulated that the proviso should have no operation while they were mortgagees of the policy. I have heard no reason suggested why the assured should stand in a less favorable position than if he had borrowed from an indifferent person.

" But the company made no such provision, and I am of opinion that the assurance company contracted in such manner as to place them and the assured in the position of mortgagor and mortgagees ; that the condition and the exception contained in it were in force when the assured died, and that the moment they agreed to take the deposit they came within the condition that the policy, to the extent of their interest, should be binding.

" The policy, therefore, being still in force to the amount of the

debt due to the assurance company, that debt must be considered as satisfied, and the securities held by the company must be re-assigned. The assurance company must pay the costs of the suit."

This is a distinct adjudication that the fact that the estate of a suicide may in substance obtain the benefit of a life insurance does not violate any rule of public policy. In any case where it is sought, as in this case, to relieve a party from the performance of a contract upon the idea that public policy forbids such performance, the substance, not the form, of the transaction is to be considered. The cases cited show that that there is no public policy recognized by the courts of England or America which prevents relatives and creditors of a suicide, and even the estate of a suicide, from receiving the proceeds or benefit of a life policy which becomes, by its terms, payable on the death of a man who in fact dies by his own hand.

If public policy does not forbid the payment of the policy when by the terms of the policy, payment is made directly by the insurance company to the creditor or relative, public policy cannot forbid when the payment is made in effect for the benefit of creditors and relatives, to be distributed among them by an executor or administrator.

The general practice of the defendant company also shows that it does not regard suicide by itself a reason for avoiding the policy upon grounds of public policy. When the suicide clause is inserted in its policies, it is in terms limited to a suicide occurring within two years after the issue of the policy.

If a policy with such a clause is enforceable in case of suicide occurring twenty years after its issue, a policy with no suicide clause is enforceable at all times, unless the company be able to defend by showing in fact that the policy was taken out with the fraudulent purpose of committing suicide.

The same principle was laid down in *Jackson vs. Foster*, 5 Jurist, 547, and the discussion in the case was over the purely technical question whether assignees in bankruptcy were within the expressed condition in the policy. A policy contained a condition that it should be void if the life insured

died by suicide, but if any third party had acquired a *bona fide* interest therein by assignment or by legal or equitable lien for a valuable consideration or a security for money, the insurance should to the extent of such interest be valid. *Held*, that assignees in bankruptcy were not within the language of the condition.

In the Exchequer Chamber, Cockburn, C. J., said:—

"The insurance company may be taken to have granted the insurance upon a calculation of the average duration of human life; and for that reason to have excluded from the benefit of the policy the case of death by suicide. But for this exclusion a man might insure his life with the intention of putting an end to it by his own hands. But on the other hand, it would be injurious to the interests of insurance companies if policies could be avoided whenever the assured committed suicide, even when the interest in the policy had passed to a third party, inasmuch as one of the chief advantages of a life policy, the power of making use of it as a negotiable instrument, would be destroyed. This company seems to have made a sort of compromise, and stipulated that the policy should be avoided by the suicide of the assured, except where a *bona fide* interest in the policy had passed from the assured to a third party, either by way of assignment or by way of legal or equitable lien or as a security for money."

It would tend to show that there can be no general policy of the law which would compel the insertion into life insurance contracts of a clause avoiding them upon the ground of suicide, when the statutes of certain States provide that even if the clause be written in, the fact of suicide is no defense unless the party contemplated suicide in applying for the policy. Such is the Missouri statute, enforced in *L. I. Co. vs. Berry*, 50 Fed., 511.

The laws as well as public opinion regard a suicide as an unfortunate rather than a felon.

Article I., section 19, of the Constitution of Pennsylvania provides:—

"The estate of such persons as shall destroy their own lives shall descend or vest as in cases of natural death."

This humane provision is found in the Constitution of 1794 and every Constitution since adopted."

It would also appear that these formal differences, as to who effected the insurance and in whose favor the policy was made payable, were immaterial and not of the substance of the transaction. In the opinion of Mr. Justice Hunt, in *Terry vs. Ins. Co.*, 15 Wall, already cited, he says:—

“ In the present instance, the contract of insurance was made between Mrs. Terry and the company, the insured not being in form a party to the contract. Such contracts are frequently made by the insured himself, the policy stating that it is for the benefit of the wife, and that in the event of death the money is to be paid to her. We see no difference in the cases. In each it is the case of a contract, and is to be so rendered as to give effect to the intention of the parties.”

And a like opinion of the immateriality of the question whether the suit was by executor, administrator, or assignee was entertained by Judge Trunkey in his charge to the jury in *Bank of Oil City vs. Guardian Mutual Ins. Co.*, Common Pleas Venango County, 6 Leg. Gaz., 348.

The action was by an assignee upon a policy in terms void if the insured died by his own hand. In course of charge the judge said:—

“ One guilty of suicide who has his life insured commits a fraud upon the company, and there can be no recovery on the policy, whether there be such a condition expressed therein or not. This fraud would defeat recovery by his assignee or by the representative of his estate.”

In so far as the charge of Judge Trunkey is against us, it is mere dictum and also contrary to all the authorities, English and American. The case is cited for the purpose of showing that to the mind of Judge Trunkey there was no substantial distinction between the rights of a relative or creditor assignee and those of an executor or administrator.

These cases render it clear that the reason suggested by the House of Lords in Fauntleroy's case why the policy could not be paid in that case, have no application to the payment of a policy upon death by suicide.

In Fauntleroy's case, *Amicable Society vs. Bolland*, 4 Bligh, N. S., 240, assignees in bankruptcy sought to recover on a

policy on the life of one executed for felony—forgery on the Bank of England. The Lord Chancellor held that no recovery could be had, saying:—

“ It appears to me that this resolves itself into a very plain and simple consideration. Suppose that in the policy itself this risk had been insured against, that is, that the party insuring had agreed to pay a sum of money year by year, upon condition that in the event of his committing a capital felony, and being tried, convicted, and executed for that felony, his assignees shall receive a certain sum of money—is it possible that such a contract could be sustained? Is it not void upon the plainest principles of public policy? Would not such a contract, if available, take away one of those restraints operating on the minds of men against the commission of crimes, namely, the interest we have in the welfare and prosperity of our connections? Now, if a policy of that description, with such a form of condition inserted in it in express terms, cannot, on grounds of public policy, be sustained, how is it to be contended that in a policy expressed in such terms as the present, and after the events which have happened, we can sustain such a claim? Can we, in considering this policy, give to it the effect of that insertion which, if expressed in terms, would have rendered the policy, as far as that condition went, at least altogether void? ”

While a policy drawn in express terms to insure only against the case of suicide might be objectionable to public policy, the cases cited show that where the contract of insurance is entered into in good faith to cover the contingencies of life and death, the fact that he whose life is insured dies by his own hand does not, upon any ground of public policy, stand in the way of the payment of the policy.

If the proposition of law affirmed by the court below is sound, no contract could be made which would permit payment in case of suicide, where the policy is for the benefit of the insured. And yet experience shows that controlling circumstances render suicide one of the hazards of life against which an applicant for insurance should protect himself. For just as homicide in the eye of the law is divided into three classes, namely, justifiable, excusable, and felonious, so may suicide be divided, to wit, justifiable, as in the case of a soldier who goes to certain death in defense of his country; excusable, where the insured is insane; and felonious, when the acts of insurance and suicide are with intent to defraud

the insurer. Other illustrations of these various classes may be readily imagined. Certainly public policy would not prevent an insurance against the first two risks, and the third renders the contract void for sounder reasons than the argument of public policy.

Whether, therefore, in any given case the suicide is justifiable, excusable, or felonious is a question of fact. Is there any public policy which could forbid a contract which excludes the question of fact? Certainly a contract would be sustained which provided that suicide should not prevent recovery on the policy, it being agreed therein that the mere fact of suicide should be deemed conclusive proof of insanity, thus bringing all suicide within the class excusable.

Ætna Life Ins. Co. vs. Florida, 69 Fed. Rep., 932.

JOHN HAMPTON BARNES,
RICHARD C. DALE,
GEO. TUCKER BISPHAM,

For Petitioners.

SUPREME COURT OF THE UNITED STATES.

October Term, 1897. No. 142.

A. Howard Ritter, Executor of William M. Runk, deceased, a citizen of the State of Pennsylvania, Plaintiff in Error,

vs.

The Mutual Life Insurance Company of New York, a corporation organized under the laws of and a citizen of the State of New York, Defendant in Error.

PAPER BOOK OF PLAINTIFF IN ERROR.

ON A WRIT OF *Certiorari* TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT. IN ERROR TO THE CIRCUIT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

I. HISTORY OF THE CASE.

This action was brought on February 10th, 1893, upon six policies of life insurance aggregating \$75,000, issued November 10th, 1891, upon the life of William M. Runk, who in his lifetime was a member of the firm of Darlington, Runk & Co., leading retail dry goods merchants in the city of Philadelphia. Mr. Runk died October 5th, 1892, from the effects of a pistol shot wound, which, according to the verdict of the Coroner's jury, was inflicted by himself while suffering under a temporary aberration of the mind.

The policy contained no clause qualifying the obligation of the company to pay upon the death of the assured in case of "suicide" or "death by his own hand."

At the trial the defense in the opening was rested principally upon an allegation that the policies had been obtained by Runk with the fraudulent intent, conceived prior to so obtaining the insurance, of killing himself for the benefit of his creditors and his family. Had this defense been the issue, on which the case was submitted to the jury, this writ of error would not have been taken. But the defendant failed to adduce evidence upon which, on this issue, the jury could have properly found a verdict in its favor, and also failed to secure the admission in evidence of the application made by Runk upon which the policies issued, which application *did* contain a warranty against suicide for two years after the date of the policy, but was not actually annexed to the policy as required by the statute of 11th May, 1881. The defense was then shifted to the bald proposition of law that the suicide of Mr. Runk, without any express clause to that effect, avoided the policy unless the plaintiff proved that Runk was insane. The court, expressing great doubt as to the correctness of the ruling, sustained this proposition, and the plaintiff in rebuttal adduced considerable evidence tending to establish insanity. In the charge of the court the definition of insanity was drawn so narrowly, the burden of proving insanity was placed with such emphasis upon the plaintiff, and the comments of the learned judge upon the evidence were so adverse that the jury found a verdict for the defendant.

The assignments of error raise three principal questions:—

First.—Does the mere fact that he whose life is insured dies by his own hand avoid the policy—there being no clause in the policy limiting the absolute obligation of the company to pay upon the happening of the death and no evidence tending to prove fraud in effecting the insurance?

(Sixth and eighth assignments.)

Second.—If it be the law that suicide by a sane man avoids a policy upon his life, what is the definition of insanity which relieves from that consequence?

[In the brief which follows we endeavor to show that the definition given in the charge in this case does not accord with the definitions heretofore approved by the Supreme Court of the United States.]

(Seventh, ninth, tenth, and eleventh assignments.)

Third.—Was there any evidence which would justify the jury in finding that, prior to taking out the insurance, Runk had conceived the fraudulent design of effecting the policies and of taking his own life for the benefit of his creditors and family?

[While both counsel and court, as appears by the charge, regarded this last question as no longer an issue in the case, the refusal to affirm plaintiff's points, drawn with reference to this issue, was an error calculated to greatly prejudice the minds of the jury in determining the only question finally submitted to them, namely, the insanity of the insured.]

(First, second, third, fourth, and fifth assignments.)

II. ASSIGNMENTS OF ERROR.

1. The admission of the evidence of Ralph F. Cullinan contained in the following offer:—

“MR. JOHNSON:—I propose to prove the date anterior to the issuance of this policy of the appropriation by Mr. Runk of the securities of the City Mission in his hands as treasurer.

“(Objected to, on the ground that the mere proof of indebtedness does not indicate any intention whatever to take one's own life.)

“THE COURT:—This is one of the circumstances that must be heard. Its value, or whether it really has any value, could not be considered at this time. The court

will have to hear it, and reserve for after consideration what weight it should have or whether it should have any. We may be asked to rule it out, and, if so, we will consider it."

2. The admission of the evidence of William G. Hopper contained in the following offer:—

"MR. JOHNSON:—I propose to prove that this witness is a creditor of the estate to the amount of \$7756.88, which credit is due to him in the course of speculative stock transactions of William M. Runk, and also to prove the extent of those speculative transactions and the time of their commencement, and that for two or three years anterior to this Mr. Runk was speculating and making and losing largely."

3. The refusal of the court to affirm plaintiff's first point, which point was as follows:—

"The evidence is not sufficient to warrant the jury in finding that the deceased entered into the contracts of insurance evidenced by the policies sued upon, with the intention of defrauding the company defendant issuing the same."

4. The refusal of the court to affirm plaintiff's second point, which point was as follows:—

"The evidence is not sufficient to warrant the jury in finding that the deceased entered into the said contracts of insurance with the intention of committing suicide."

5. The refusal of the court to affirm plaintiff's third point, which point was as follows:—

"The evidence upon the part of the defendant does not warrant any inference of fact which constitutes a defense in law to the plaintiff's right to recover the amount due upon the said policies."

6. The refusal of the court to affirm plaintiff's fourth point, which point was as follows:—

"The mere fact that the insured committed suicide does not, standing alone, avoid the policies, there being no condition to that effect in the policies."

And the answer thereto as follows:—

"The fourth point is also disaffirmed, for the reason given in answering the defendant's first point, of which I will speak directly."

7. The answer to plaintiff's fifth point, which point and answer are as follows:—

"If one whose life is insured intentionally kills himself when his reasoning faculties are so far impaired by insanity that he is unable to understand the moral character of his act, even if he does understand its physical nature, consequence, and effect, such self destruction will not of itself prevent recovery upon the policies.

"This is affirmed. I will say, however, that we must understand what is meant and intended by the term 'moral character of his act.' It is a term which has been used by the courts and is correctly inserted in the point; but it is a term which might be misunderstood.

"We are not to enter the domain of metaphysics in determining what constitutes insanity, so far as the subject is involved in this case. If Mr. Runk understood what he was doing, and the consequences of his act or acts, to himself as well as to others; in other words, if he understood, as a man of sound mind would, the consequences to follow from his contemplated suicide to himself, his character, his family, and others, and was able to comprehend the wrongfulness of what he was about to do, as a sane man would, then he is to be regarded by you as sane. Otherwise he is not."

8. The affirmation by the court of the defendant's first point, and the answer of such point, which point and answer are as follows:—

"There can be no recovery by the estate of a dead man of the amount of policies of insurance upon his life if he takes his own life designedly whilst of sound mind.

"This point is affirmed.

"The defendant's first point, which I have just read to you and affirmed, and the plaintiff's fourth point, which I have disaffirmed, raise the same question; and it is one of very great difficulty. It is very remarkable that the question has never been directly passed upon by any court in this country or in England.

"When the points were presented I said in your presence that, in the absence of authority or of custom on the part of insurance companies or in the business of insuring, bearing on the subject, I would feel little hesitation in holding that suicide by the insured, while in a sane condition of mind, constitutes a defense to the payment of the policy; but that I inclined to believe there was authority to the contrary. It is conceded, however, that there is nothing to be found on the subject but dicta, and this is conflicting, and there is no evidence before the court of any custom in the business of insurance bearing on this subject.

"I regret that I must pass on the question without opportunity for examination or reflection. It seems to me, however, that every contract of life insurance contains an implied condition that the insured will not intentionally terminate his life, but that the insurer shall have the benefit of the chances of its continuance until terminated in the natural, ordinary course of events. It is on these chances that the premium is calculated and based and the contract is founded. It cannot be doubted that if one having a policy on his buildings, insuring against fire, should intentionally burn them, his act would be a defense to the policy; nor that one taking a policy on the life of his debtor, whom he subsequently murders, cannot recover the insurance. In principle I am unable to distinguish these cases from that where the insured commits suicide. The fraud on the insurer seems to me to be as clear in the latter case as in either of the others."

9. The learned court erred in charging the jury as follows:—

"I therefore charge you that if he was in a sane condition of mind at the time, as I have described, able to understand the moral character and consequences of his act, his suicide is a defense to this suit."

10. The learned court erred in charging the jury as follows:—

"If the opinion is based on the fact alone that he committed suicide it is of no value."

11. The learned court erred in charging the jury as follows:—

"While I thus submit the question and remind you that the responsibility of deciding it rests upon you alone, I consider it a duty to say that I do not regard the evidence on which the plaintiff relies as strong."

BRIEF OF ARGUMENT.

FIRST.—DOES THE TAKING OF HIS OWN LIFE AVOID A POLICY OF INSURANCE UPON THE LIFE OF THE SUICIDE?

This novel and important question is raised by the sixth and eighth assignments of error, which may be considered together.

The sixth assignment is as follows:—

"The refusal of the court to affirm plaintiff's fourth point, which point was as follows:—

"The mere fact that the insured committed suicide does not, standing alone, avoid the policies, there being no condition to that effect in the policies."

And the answer thereto as follows:—

"The fourth point is also disaffirmed, for the reason given in answering the defendant's first point, of which I will speak directly."

The eighth assignment is as follows:—

The affirmance by the court of the defendant's first point, and the answer of such point, which point and answer are as follows:—

"There can be no recovery by the estate of a dead man of the amount of policies of insurance upon his life if he takes his own life designedly whilst of sound mind.

"This point is affirmed.

"The defendant's first point, which I have just read to you and affirmed, and the plaintiff's fourth point, which I have disaffirmed, raise the same question; and it is one of very great difficulty. It is very remarkable that the question has never been directly passed upon by any court in this country or in England.

"When the points were presented I said in your presence that, in the absence of authority or of custom on the part of insurance companies or in the business of insuring bearing on the subject, I would feel little hesitation in holding that suicide by the insured, while in a sane condition of mind, constitutes a defense to the payment of the policy; but that I inclined to believe there was authority to the contrary. It is conceded, however, that there is nothing to be found on the subject but dicta, and this is conflicting, and there is no evidence before the court of any custom in the business of insurance bearing on this subject.

"I regret that I must pass on the question without opportunity for examination or reflection. It seems to me, however, that every contract of life insurance contains an implied condition that the insured will not intentionally terminate his life, but that the insurer shall have the benefit of the chances of its continuance until terminated in the natural, ordinary course of events. It is on these chances that the premium is calculated and based and the contract is founded. It cannot be doubted that if one having a policy on his buildings, insuring against fire, should intentionally burn them, his act would be a defense to the policy; nor that one taking a policy on the life of his debtor, whom he subsequently murders, cannot recover the insurance. In principle I am unable to distinguish these cases from that where the insured commits suicide. The fraud on the insurer seems to me to be as clear in the latter case as in either of the others."

The question raised by these assignments of error is whether a policy of insurance, taken out in good faith for the benefit of the estate of the insured, with no clause or

condition limiting the obligation of the company to pay if the insured commits suicide, is avoided by the fact that the insured commits suicide, under the pressure of subsequently-occurring misfortunes.

The learned judge who tried the case correctly stated that this precise question has never heretofore arisen and been decided in any court; but in a leading case, in which the question did not directly arise upon the record, this court has expressed the opinion that suicide, without a condition or clause so providing, does not avoid a policy of life insurance, and expressed its disapproval of a dictum of Chief Justice Black while in the Supreme Court of Pennsylvania in the case of *Hartman vs. Ins. Co.*, 21 Pa. St., 466, which seemed to support the other view.

In *Life Insurance Company vs. Terry*, 15 Wallace, 580, this court, repudiating the English rule of *Borradaile vs. Hunter*, held that even if the policy contained a clause against suicide or death by his own hand, such clause did not apply if the insured was insane. In the opinion Mr. Justice Hunt criticises the language of Judge Black, above referred to:—

"In *Hartman vs. Keystone Insurance Company*, the doctrine of *Borradaile vs. Hunter* was adopted with the confessedly unsound addition that suicide would avoid a policy although there were no condition to that effect in the policy."

We believe it is understood by the profession that all opinions filed in the Supreme Court of the United States are passed upon by each one of the justices concurring in the judgment, and are not, as in some State courts, the expression of the views of a single judge deputed to write the opinion when the judgment has been agreed upon by the court.

Upon the question raised upon these assignments of error, therefore, this court has already made a statement of the law in accordance with the view for which we contend, and expressed its disapproval of the expressions of Chief Justice Black as an unsound addition to the rule even as adopted in the English courts.

Furthermore, even the ruling of Chief Justice Black in *Hartman vs. Ins. Co.* does not go to the extent which the court below went in this case. It is to be noted that the language of Chief Justice Black was predicated of a case where the insured, within twenty-four hours after effecting the policy of insurance, committed suicide by taking arsenic purchased on the same visit to the city of Harrisburg during which his policy was taken out. All the circumstances of the case indicated a purpose to commit suicide formed prior to the making of the contract, in which case no one doubts that the contract is tainted with fraud in its inception; and it was upon this state of facts, and upon a policy which was by its expressed terms void if the deceased died by his own hand, that in *Hartman vs. Keystone Ins. Company*, 21 Pa. St., 466, it was said:—

"The conditions of the policy are that it shall be null and void 'if the assured shall die by his own hand, in or in consequence of a duel, or by the hands of justice,' &c. The plaintiff argues that the first clause here quoted does not embrace suicide committed in swallowing arsenic. Where parties have put their contract in writing their rights are fixed by it. But the contract is what they meant it to be, and when we can ascertain their meaning from the words they have used, we must give it effect. One rule of interpretation is, that we must never attribute an absurd intent if a sensible one can be extracted from the writing. No absurdity could be greater than a stipulation against suicide in a duel. The words 'die by his own hand' must therefore be disconnected from those which follow. Standing alone, they mean any sort of suicide.

"Besides this, the court was very plainly right in charging that if no such condition had been inserted in the policy, a man who commits suicide is guilty of such a fraud upon the insurers of his life that his representatives cannot recover for that reason alone."

The report of the case does not give the charge of Judge Pearson in the court below, but it may be assumed that the charge was given in connection with the undisputed facts of the case, which necessitated the conclusion that the suicide was simply the carrying out of the preconceived fraudulent intent with which the policy was procured. And this case (*Hartman vs. Insurance Company*) has not been followed by the Supreme Court

in any case in Pennsylvania, but, on the contrary, has been expressly limited in the only case in which the subject was touched upon. *American Life Insurance Co. vs. Isett's Admrs.*, 74 Pa., 176 (1873). "The case of Hartman *vs.* Insurance Company is not in conflict with the charge of the court. It merely holds if the insured committed suicide by swallowing poison he died by his own hand. It does not profess to hold that self destruction by the insured in all cases avoids the policy."

It has never been doubted that a policy, taken out with the preconceived purpose of committing suicide, could not be made the basis of recovery when the suicide was committed. The fraudulent purpose would vitiate the contract.

In Missouri, by statute, insurance companies are prevented from making any contract of insurance which will enable suicide from being pleaded as a defense, "unless it shall be shown to the satisfaction of the court or jury trying the case that the insured contemplated suicide at the time he made his application for the policy."

In *Ætna Ins. Co. vs. Florida*, 32 U. S. App., 753, 69 Fed. Rep., 69, Circuit Judge Thayer, referring to this clause, said it—

"Was not intended to create or afford to life insurance companies a new defense to such actions, but rather to state an exception to the general rule first enumerated. The legislature was doubtless aware of the fact that at common law, without the aid of any statute, it was competent for an insurance company to show by way of defense to an action in a life insurance policy that the assured had taken out the policy with the pre-conceived intent of thereafter committing suicide, and that such purpose was subsequently executed. It doubtless intended by the concluding clause to preserve the right to still make that defense. (Citing *Smith vs. Society*, 123 N. Y., 85.) This seems to us to have been the manifest purpose of the concluding paragraph of the statute. It recognizes the existence of a defense well known to the law, to wit, the defense of fraud, and authorizes the insurer to make that defense."

This case is also valuable as defining that the contemplation of suicide within the meaning of the statute and

of the common-law rule as to fraud was a defined intent or purpose; that it would not be enough to show that the insured may have considered the question of suicide, or thought upon it. While to consider attentively or to meditate may be the primary meaning of "contemplate"—"to intend," a secondary meaning was the sense in which it was used in this statute.

While the rule stated by Mr. Justice Hunt has not come before this court for further consideration until now, we submit that it is founded on a correct apprehension of the nature of the contract of life insurance; with the practice of insurance offices; and with the rule adopted in a large number of cases which, while they may not raise the precise question before the court, are not distinguishable in principle.

In *Darrow vs. Family Fund Society*, 116 N. Y., 542, the court said:—

"It was alleged as a defense that the defendant offered to prove on the trial that the member, Darrow, died from the effects of poison taken by him, and which was administered by him with the intent to take his own life. The evidence was excluded, and exception taken. The fact that he committed suicide was no defense unless it came within some condition of the contract of insurance relieving the defendant from liability in such case."

The court then proceeded to consider whether the suicide came within a clause that the policy—

"Should be void if the member shall die in violation of or attempting to violate any criminal law of the United States or of any State or county in which the member herein named may be," saying:—

"It must for the purpose of the question here be assumed that Darrow had the purpose of taking his own life, and that he fully accomplished such purpose. The result of his act, influenced by such intent, then was his death. By the act of taking his own life he violated no criminal law, unless the attempt to do it may be distinguished from the act accomplished. An act is characterized by the purpose, when ascertained, of the party doing it or by its result. If the act fails to accomplish its purpose it constitutes an attempt, but if the result of it is the con-

summation of the purpose, the act is not commonly designated as an attempt. The common acceptation of terms used, and which do not necessarily have a technical meaning, is entitled to some consideration in the construction of contracts where the intention of the parties is sought for, as it must be in the language employed. For the purpose of upholding the contract of insurance its provisions will be strictly construed as against the insurer.

"The conclusion is that the death of the member by suicide did not, within the meaning of any provision of the policy, render it for that reason void, and therefore the exclusion of the evidence upon that subject was not error. No other question requires the expression of consideration."

See also following the above case *Meachem vs. The Assn.*, 120 N. Y., page 237.

In *Kerr vs. Minnesota Mutual Benefit Association*, 39 Minn., 174, the policy of insurance provided:—

"If the assured shall die in or in consequence of the violation of any criminal law of any country, State, or Territory in which the assured may be, this certificate shall be null and void."

It was held that suicide committed by an alleged fugitive from justice to avoid arrest and trial for a crime committed by the assured, is not to be considered as the proximate result of the alleged crime, and that his death by suicide is not within the proper meaning of the policy to be considered as the violation of law therein referred to. The court further said:—

"In the law of insurance suicide is not, as a rule, recognized as a ground of exemption from liability, or for the forfeiture of a policy issued for the benefit of a third person, unless it is expressly so provided in the policy."

In *Mills vs. Rebstock*, 29 Minn., 380, the constitution and by-laws of a mutual benefit association organized to secure the benefit of life insurance to the heirs of deceased members on the death-assessment plan, and which issues no policies, stand in the place of a policy, and where such constitution and by-laws contain no provision qualifying the right of recovery in case of suicide, the heirs of a member are entitled to recover the amount stipulated, irrespective of the mode of his death.

In Northwest Association *vs.* Wanner, 24 Ill. App. Court Rep., 357, a policy having been issued by a mutual association without a suicide clause, it was held that it was not competent for the association, by a subsequent by-law, to exempt itself from liability in case of suicide.

In Cooke on Life Insurance, section 41, the effect of self destruction, when not provided against in the policy, is stated as follows:—

"If the performance by the insurer is, in general terms, conditioned on the death of the insured, there seems no valid reason why death by committing suicide should not be included, and such is the general doctrine. *A fortiori* is this true of self destruction by an insane person, but this rule is subject to the reasonable limitation that one effecting insurance with intent to commit suicide, the committing of suicide in pursuance of such intent is guilty of fraud that will avoid the contract, even though it contain no provision as to suicide. Contracts of insurance have very commonly contained provisions excepting from the risk death by suicide."

In passing upon this question at the trial of the present case in the court below, Judge Butler said to the jury:—

"I regret that I must pass on this question without opportunity for examination or reflection. It seems to me, however, that every contract of life insurance contains an implied condition that the insured will not intentionally terminate his life, but that the insurer shall have the benefit of the chances of its continuance until terminated in the natural, ordinary course of events. *It is on these chances that the premium is calculated and based and the contract is founded.*"

There was no evidence in the cause which enabled the court to make this statement of fact, and in the absence of direct evidence as to the manner in which the mortality tables are prepared it might be urged that there is reversible error in such a statement of a supposed fact; but if it be assumed that a court is entitled to refer to the manner of preparing the mortality tables as a matter of general knowledge without direct evidence, then the court was mistaken in its statement, because, in fact, it is a matter of general knowledge that the mortality tables upon which the premium is calculated and based and the

contract is founded include all deaths, including those of suicides, and this fact has been judicially noticed.

In *Estabrooke vs. Union Mutual L. I. Co.*, 54 Maine, 224, Appleton, C. J., said:—

"There is, indeed, no reason why it [the policy] should not do so [cover this as well as every other risk], for the general tables of mortality, which form the basis of the calculations upon which the policy is founded, include this [suicide] as well as every other cause of death; so that the particular risk is actually insured against."

And *Bliss on Life Insurance*, section 239, in commenting upon the insufficiency of the usual express clauses exempting the company from liability in cases of suicide, says:—

"If the companies continue to think it important to except from losses insured against any kind of self destruction, we believe they must make some such change in the terms of the exception inserted in their policies. The question of the propriety of any such exception is not a legal one. [The change suggested in the preceding section is clause giving to the insured in case of suicide the net reserve value.] It may be observed, however, that the argument sometimes used, that the mathematical calculations of the life insurance companies upon which their premiums are reckoned are based upon the ascertained deaths from all causes, and that therefore liability to death by self destruction is included mathematically in their premiums, would apply with equal force against the exception as to death by the hands of justice, in a duel, or in violation of law."

In *Breasted vs. Farmers' Loan & Trust Company*, 4 Hill (N. Y.), 73, the court said:—

"It must occur to every prudent man seeking to make provision for his family by an insurance on his life, that insanity is one of the diseases that may terminate his being. It is said the defendants did not insure the continuance of the intestate's reason, nor did they in terms insure him against smallpox or scarlet fever; but had he died of either disease there is no doubt that the defendants would have been liable. They insure the continuance of life. What difference can it make to them or to him whether it is terminated by the ordinary course of disease in his bed or in a fit of delirium he ends it himself? In each case the death is occasioned by means in the meaning of the policy."

We submit that these quotations show that the reason given without evidence by the learned court upon supposed conditions of fact was erroneous, and the second reason, which was one of legal analogy, stands upon no surer foundation.

The second reason given in the charge of Judge Butler why there could be no recovery in case of suicide, was:—

"It cannot be doubted that if one having a policy on his buildings insuring against fire should intentionally burn them, his act would be a defense to the policy; nor that one taking a policy on the life of his debtor, whom he subsequently murders, cannot recover the insurance. In principle I am unable to distinguish these cases from that where the insured commits suicide. The fraud on the insured seems to me to be as clear in the latter case as in either of the others."

We do not question that in the cases mentioned, of arson and murder, no insurance could be recovered. But these cases, although assumed to be analogous, are not necessarily so. The true question always is, was the act committed with a felonious intent? If it was, the doer of the act ought to reap no benefit from it. If it was not, the doer is not necessarily excluded from the benefit. The felonious intent is the test. Let this be considered. Let it be conceded that a creditor who holds a policy on the life of his debtor cannot recover if he feloniously kills the insured. But what shall be said of a case in which the creditor is the sheriff of the county and the debtor is a convicted murderer sentenced to be hanged? Is the holder of the policy to forfeit his right thereunder because he discharges his official duty and does execution on the criminal? Or suppose the debtor is an alien enemy, and the creditor takes his life in battle and in the discharge of his duty as a soldier; is the insurance company, especially if it be a corporation holding a charter under the creditor's government, justified in refusing to fulfill its contract because the beneficiary under the policy did his duty to the State? Again, suppose the holder of a fire policy to be an artilleryman serving a gun whose fire was directed upon the insured building then in the oc-

cupation of the enemy; and let us further suppose that the policy was for fifty per cent. only of the value of the house; must the owner of the policy lose not only the uninsured half of the value but also that half which was covered by the policy because he did his duty? It would be a good argument to present to the courts of the enemy; but (it is submitted) it should not be held good when urged upon the tribunals of the common country of the insurer and insured. The view expressed, therefore, by the trial judge in this case was too broad. It unwarrantably assumed that all killing must be murder and that all destruction of property by fire is, of necessity, arson; ignoring the cases in which the act of killing and the act of setting on fire may not only be not reprehensible but may be excusable or even praiseworthy. This court has been more careful in the expression of its views. "It would be a reproach to the jurisprudence of the country," said Mr. Justice Field, "if one could recover insurance money payable on the death of a party whose life he had *feloniously* taken."

Armstrong *vs.* Mutual Life Insurance Company,
117 U. S., 591.

We think, moreover, that the court below, in the hurry of the trial, failed to distinguish the present case from that of the creditor who *murders* his debtor upon whose life an insurance is held, for another obvious reason. Confusion often arises in life insurance matters from the paucity of language. The party whose life is insured is spoken of as the "insured" or "assured;" so also the party who is beneficially interested in the payment of the insurance is spoken of as the "insured." There is no analogy, however, between the relations of the parties.

It would be so contrary to conscience that he who is personally to enjoy the proceeds of a life insurance policy should accelerate the time of such enjoyment by the commission of the high crime of murder, that the law recoils from the idea that the wrongdoer is to enjoy the fruit of his crime. As was said by Mr. Justice Field, in Arm-

strong *vs.* Mutual Life Insurance Company, 117 U. S., 591 (already quoted):—

"It would be a reproach to the jurisprudence of the country if one could recover insurance money payable on the death of a party whose life he had *feloniously* taken. As well might he recover insurance money upon a building that he had *willfully* fired."

But he whose life is insured has no beneficial or enjoyable interest to the proceeds of the life policy. The contract by the insurance company is to pay a certain sum upon the termination of the life insured. The payment, by the terms of the policy, may be directed by any one who is interested in the continuance of the life, either relative or creditor, or it may be payable to executors and administrators, to be by them applied for the benefit of creditors and relatives as their interest may be established by law.

Hence it has become the practice of the English companies to provide expressly that if the policy be made payable or be assigned to a creditor or relative, the suicide of the one whose life is insured shall not relieve the company from liability to make payment, and the same conditions expressly protects the payment of the policy in favor of any one who has by charge or lien acquired an interest therein.

In several American cases it has been held that in an action by a beneficiary named in a life policy containing no suicide clause, the suicide of the party upon whose life the policy issued is no defense.

In the absence of a statute declaring what is public policy, or of a condition in a contract limiting its operation, it is not the function of a court to declare contracts void because of supposed public policy.

The proper limitations upon judicial power are very clearly stated in the recent opinion in Carpenter's Estate, 170 Penna. St., 203, where the question was whether a son convicted of murdering his father was entitled to share in the distribution of the estate under the intestate laws. The court held that he was.

Mr. Justice Green in the opinion said:—

"The penalty of murder in the first degree in Pennsylvania is death by hanging. No confiscation of lands or goods, and no deprivation of the inheritable quality of blood, constitutes any part of the penalty of this offense. The Declaration of Rights, article 1, section 18, of the Constitution of the State, declares that 'No person shall be attainted of treason or felony by the legislature,' and by section 19 it is provided that 'No attaignment shall work corruption of blood, nor, except during the life of the offender, forfeiture of estate to the Commonwealth. The estate of such persons as shall destroy their own lives shall descend or vest as in cases of natural death; and if any person shall be killed by casualty, there shall be no forfeiture by reason thereof.' These are provisions of the organic laws which may not be transcended by any legislation. Inasmuch as the prescribed penalty for murder is death by hanging (Crimes Act of 1860, section 75, Bright. Purd., 511, pl. 232), without any forfeiture of estate or corruption of blood, it cannot be said that any such consequence can be lawfully attributed to any such offense. In other words, our Constitution positively prohibits any attaint of treason or felony by the legislature and any corruption of blood by reason of attaignment, or any forfeiture of estate, except during the life of the offender. * * * It is argued that the son who murders his own father has forfeited all right to his father's estate because it is his own wrongful act that has terminated his father's life. The logical foundation of this argument is, and must be, that it is punishment for the son's wrongful act. But the law must fix punishments, the courts can only enforce them. In this State no such punishment as this is fixed by any law, and therefore the courts cannot impose it. It is argued, however, that it would be contrary to public policy to allow a parricide to inherit his father's estate. Where is the authority for such a contention? How can such a proposition be maintained when there is a positive statute directing a precisely opposite conclusion? In other words, when the imperative language of a statute prescribes that upon the death of a person his estate shall vest in his children in the absence of a will, how can any doctrine or principle or other thing called public policy take away the estate of a child and give it to some other person? The intestate law casts the estate upon certain designated persons, and this is absolute and peremptory, and the estate cannot be diverted from those persons and given to other persons without violating the statute. There can be no public policy which contravenes the positive language of a statute."

In *Cleaver vs. Mutual Reserve Fund Life Asso.*, 1 Queen's Bench, 147, the English Court of Appeals held:—

"The executors of a person who has effected an insurance on his life for the benefit of his wife can maintain an action on the policy, notwithstanding the fact that the death of the insured was caused by the felonious act of the wife. The trust created by the policy in favor of the wife, under the Married Women's Property Act, 1882, section 11, having become incapable of being performed by reason of her crime, the insurance money forms part of the estate of the insured, and as between his legal representatives and the insurers no question of public policy arises to afford a defense to the action."

Fitch vs. American Popular Ins. Co., 59 N. Y., 557, was a suit by a widow, to whom the policy by its terms was made payable.

Rapallo, J., said:—

"These policies are provisions made usually by persons of slender means for the benefit of their families in case of death. They sometimes devote their small savings for many successive years to paying the premiums. * * *

"The refusals to charge as requested are covered by the remarks already made, and this disposes of all the material exceptions except the rejection of evidence that Fitch, the deceased, committed suicide.

"The policy contained no stipulation that it would be void in case of the death of the insured by suicide. It was not taken out for the benefit of Fitch, but of his wife and children, although they were bound by his representations, and any fraud he may have committed in taking out the policy, the policy having been secured through his agency, yet they were not bound by any acts or declarations done or made by him after the issue of the policy unless such acts were done in violation of some condition of the policy. We have examined the various grounds upon which the defendant claims that this evidence was admissible, but are of opinion that they are not sufficient."

Patrick vs. Excelsior Life Insurance Company, 67 Barb., 202.

This was an action on a life policy issued for the benefit of the insured's wife. The policy did not contain any clause making it void in case of the suicide of the insured.

The court said:—

"The case of *Fitch vs. The Insurance Company*, 59 N. Y., 557, has settled the doctrine that in the case of a policy for the benefit of the wife, the suicide of the insured is not a defense where there is no stipulation to that effect in the policy. This doctrine makes the question of sanity or insanity immaterial in this case, and disposes of most of the points raised by the defendants, for I do not think that the expression 'in known violation of the law of any State,' can be construed to include suicide, although suicide has been called a felony."

That no public policy prevents recovery on a policy of insurance the proceeds of which are to be used for the payment of the debts of the insured, is shown by *Moore vs. Woolsey*, 4 Ellis & B., 243, and *Jones vs. Consolidated Investment As. Co.*, 26 Beav., 256.

The only difference between the English cases and the present case is that the assured there by deed had charged the proceeds of the policy with the payment of debts. In Pennsylvania, by virtue of the statute, the proceeds pass into the hands of the executor or administrator charged with the payment of the debts.

There can be no policy of law which renders the contract of insurance void in the one case which does not apply equally to the other.

In *Jones vs. Consolidated Investment Ass. Co.*, 26 Beav., 256, before Romilly, M. R.:—

"One of the conditions of a life policy was that it should be void if the assured died by his own hand, except it should have been assigned to other parties for valuable consideration six months before his death. *Held*, that a letter to A. B., charging it with a floating balance due to him and made three years previous to the death of the assured by his own hand, was within the exception."

In *White vs. British Empire Life Ass. Co.*, L. R., 7 Eq., 194, an assurance company advanced money to W. on a mortgage of real security, and on his effecting a policy on his life in their office for the amount of the loan, which was deposited with the company as collateral security. The policy contained a condition that if the assured died by his own hands, by the hands of justice, or by dueling, the policy should be void, except to the extent of any

bona fide interest therein which at the time of such death should be vested in any other person or persons for a sufficient pecuniary or other consideration. W. committed suicide under temporary insanity while the policy was in the hands of the company. *Held*, that the company and the assured stood in the same position as if the policy had been mortgaged to any third person; that the company came within the exception in the condition, and therefore that the policy was valid to the extent of the mortgage debt due to them at the death of the insured.

Sir R. Malins, V. C.:—

"It is agreed on both sides, that in the events which have happened, if Mr. White had retained the policy in his own hands it would have been void; and that if it had been deposited for value in the hands of any third person it would have been valid to the extent of any *bona fide* interest in such third person; and the question is, whether the assurance company, having advanced money to the assured and taken a deposit of the policy as a collateral security, the company must be considered as other persons who have acquired an interest in the policy?

"In the case of *Solicitors' and General Life Assurance Company vs. Lamb*, there was a clause very similar to the one upon which the question arises in this case, and the question as to the nature and effect of such a clause was raised both before Vice-Chancellor Wood and the Lords Justices; and Vice-Chancellor Wood laid down the rule, which I think is the true rule, that such a condition is for the benefit, not of the office, but of the assured. The Vice-Chancellor said: 'The object of the condition is to increase the value of the policy to the holder, *i. e.*, in the first place, to the assured. And if that be so, I do not see how I can hold that in the absence of fraud the estate of the assured is to be deprived of the benefit intended to be given to him by the exception merely because the mortgagee happens to be fully secured.' The same rule was adopted by the Lords Justices, who held that the condition was intended for the benefit of the assured in order to render the policy an available security.

"This condition, then, being for the benefit of the assured, and it being admitted that if he had deposited it for value with an indifferent person it would have been valid to the amount of such interest, why should the assured be in a less favorable position because the assurance company have themselves advanced him money and taken it as a security? If the company desired that under these circumstances the assured should be in a less favorable position than if he had borrowed from a third person,

they might have stipulated that the proviso should have no operation while they were mortgagees of the policy. I have heard no reason suggested why the assured should stand in a less favorable position than if he had borrowed from an indifferent person.

"But the company made no such provision, and I am of opinion that the assurance company contracted in such manner as to place them and the assured in the position of mortgagor and mortgagees; that the condition and the exception contained in it were in force when the assured died, and that the moment they agreed to take the deposit they came within the condition that the policy, to the extent of their interest, should be binding.

"The policy, therefore, being still in force to the amount of the debt due to the assurance company, that debt must be considered as satisfied, and the securities held by the company must be re-assigned. The assurance company must pay the costs of the suit."

This is a distinct adjudication that the fact that the estate of a suicide may in substance obtain the benefit of a life insurance does not violate any rule of public policy. In any case where it is sought, as in this case, to relieve a party from the performance of a contract upon the idea that public policy forbids such performance, the substance, not the form, of the transaction is to be considered. The cases cited show that there is no public policy recognized by the courts of England or America which prevents relatives and creditors of a suicide, and even the estate of a suicide, from receiving the proceeds or benefit of a life policy which becomes, by its terms, payable on the death of a man who in fact dies by his own hand.

If public policy does not forbid the payment of the policy when, by the terms of the policy, payment is made directly by the insurance company to the creditor or relative, public policy cannot forbid it when the payment is made in effect for the benefit of creditors and relatives, to be distributed among them by an executor or administrator.

The general practice of the defendant company also shows that it does not regard suicide by itself a reason for avoiding the policy upon grounds of public policy.

When the suicide clause is inserted in its policies, it is now usually in terms limited to a suicide occurring within two years after the issue of the policy.

This is recognized in *Kelley vs. Mutual Life Ins. Co., 75 Fed. Rep., 637*, where Woolson, J., said:—

"One of the provisions of the policies in suit is that suicide after two years from date of policy would not be a valid ground for contest, and when the insured affixed his signature to the several applications for the policies in suit herein he could not have misunderstood that the statements therein, 'I also warrant and agree that I will not die by my own hand, whether sane or insane, during said period of two years,' were introduced for the purpose of excepting from the operation of the policy any intended self destruction within such two years. He was thereby informed, and each holder of said policies (containing therein the application with this warranty in full) was informed that 'if the insured purposely destroyed his own life within said two years, the company would be relieved from liability under said policies.'"

If a policy with such a clause is enforceable in case of suicide occurring two years and one day after its issue, a policy with no suicide clause is enforceable at all times, unless the company be able to defend by showing in fact that the policy was taken out with the fraudulent purpose of committing suicide.

The same principle was laid down in *Jackson vs. Foster*, 5 Jurist, 547, and the discussion in the case was over the purely technical question whether assignees in bankruptcy were within the expressed condition in the policy. A policy contained a condition that it should be void if the life insured died by suicide, but if any third party had acquired a *bona fide* interest therein by assignment or by legal or equitable lien for a valuable consideration or a security for money, the insurance should to the extent of such interest be valid. *Held*, that assignees in bankruptcy were not within the language of the condition.

In the Exchequer Chamber, Cockburn, C. J., said:—

"The insurance company may be taken to have granted the insurance upon a calculation of the average duration of human life, and for that reason to have excluded from the benefit of the

policy the case of death by suicide. But for this exclusion a man might insure his life with an intention of putting an end to it by his own hands. But on the other hand, it would be injurious to the interests of insurance companies if policies could be avoided whenever the assured committed suicide, even when the interest in the policy had passed to a third party, inasmuch as one of the chief advantages of a life policy, the power of making use of it as a negotiable instrument, would be destroyed. This company seems to have made a sort of compromise, and stipulated that the policy should be avoided by the suicide of the assured, except where a *bona fide* interest in the policy had passed from the assured to a third party, either by way of assignment or by way of legal or equitable lien, or as a security for money."

It would tend to show that there can be no general policy of the law which would compel the insertion into life insurance contracts of a clause avoiding them upon the ground of suicide, when the statutes of certain States provide that even if the clause be written in, the fact of suicide is no defense unless the party contemplated suicide in applying for the policy. Such is the Missouri statute, enforced in *L. I. Co. vs. Berry*, 50 Fed., 511, and *Western Ins. Co.*, 5 Florida, *supra*.

The laws as well as public opinion regard a suicide as an unfortunate rather than a felon.

Article I., section 19, of the Constitution of Pennsylvania, provides:—

"The estate of such persons as shall destroy their own lives shall descend or vest as in cases of natural death."

This humane provision is found in the Constitution of 1794 and every Constitution since adopted.

It would also appear that these formal differences, as to who effected the insurance and in whose favor the policy was made payable, were immaterial and not of the substance of the transaction. In the opinion of Mr. Justice Hunt, in *Terry vs. Ins. Co.*, 15 Wall, already cited, he says:—

"In the present instance the contract of insurance was made between Mrs. Terry and the company, the insured not being in form a party to the contract. Such contracts are frequently made by the insured himself, the policy stating that it is for the

charter of the Penn. Co. 1791. If any person through intent or inadvertency shall destroy himself or his estate and his personal effects, the same shall not make any claim.

benefit of the wife, and that in the event of death the money is to be paid to her. We see no difference in the cases. In each it is the case of a contract, and is to be so rendered as to give effect to the intention of the parties."

And a like opinion of the immateriality of the question whether the suit was by executor, administrator, or assignee, was entertained by Judge Trunkey in his charge to the jury in *Bank of Oil City vs. Guardian Mutual Ins. Co.*, Common Pleas Venango County, Penna., 6 Leg. Gaz., 348.

The action was by an assignee upon a policy in terms void if the insured died by his own hand. In course of charge the judge said:—

"One guilty of suicide who has his life insured commits a fraud upon the company, and there can be no recovery on the policy, whether there be such a condition expressed therein or not. This fraud would defeat recovery by his assignee or by the representative of his estate."

In so far as the charge of Judge Trunkey is against us, it is mere dictum and also contrary to all the authorities, English and American. The case is cited for the purpose of showing that to the mind of Judge Trunkey there was no substantial distinction between the rights of a relative or creditor assignee and those of an executor or administrator.

These cases render it clear that the reason suggested by the House of Lords in Fauntleroy's case why the policy could not be paid in that case, have no application to the payment of a policy upon death by suicide.

In Fauntleroy's case, *Amicable Society vs. Bolland*, 4 Bligh, N. S., 240, assignees in bankruptcy sought to recover on a policy on the life of one executed for felony—forgery on the Bank of England. The Lord Chancellor held that no recovery could be had, saying:—

"It appears to me that this resolves itself into a very plain and simple consideration. Suppose that in the policy itself this risk had been insured against; that is, that the party insuring had agreed to pay a sum of money year by year, upon condition that in the event of his committing a capital felony, and being tried,

convicted, and executed for that felony, his assignees shall receive a certain sum of money—is it possible that such a contract could be sustained? Is it not void upon the plainest principles of public policy? Would not such a contract, if available, take away one of those restraints operating on the minds of men against the commission of crimes, namely, the interest we have in the welfare and prosperity of our connections? Now, if a policy of that description, with such a form of condition inserted in it in express terms, cannot, on grounds of public policy, be sustained, how is it to be contended that in a policy expressed in such terms as the present, and after the events which have happened, we can sustain such a claim? Can we, in considering this policy, give to it the effect of that insertion which, if expressed in terms, would have rendered the policy, as far as that condition went, at least altogether void?"

While a policy drawn in express terms to insure only against the case of suicide might be objectionable to public policy, the cases cited show that where the contract of insurance is entered into in good faith to cover the contingencies of life and death, the fact that he whose life is insured dies by his own hand does not, upon any ground of public policy, stand in the way of the payment of the policy.

If the proposition of law affirmed by the court below is sound, no contract could be made which would permit payment in case of suicide where the policy is for the benefit of the insured. And yet experience shows that controlling circumstances render suicide one of the hazards of life against which an applicant for insurance should protect himself. For just as homicide in the eye of the law is divided into three classes, namely, justifiable, excusable, and felonious, so may suicide be divided, to wit, justifiable, as in the case of a soldier who goes to certain death upon a forlorn hope; excusable, where the insured is insane; and felonious, when the acts of insurance and suicide are with intent to defraud the insurer. Other illustrations of these various classes may be readily imagined. Certainly public policy would not prevent an insurance against the first two risks, and the third renders the contract void for sounder reasons than the argument of public policy.

Whether, therefore, in any given case the suicide is justifiable, excusable, or felonious is a question of fact. Is there any public policy which could forbid a contract which excludes the question of fact? Certainly a contract would be sustained which provided that suicide should not prevent recovery on the policy, it being agreed therein that the mere fact of suicide should be deemed conclusive proof of insanity, thus bringing all suicide within the class excusable.

It may be also worth while to bring to the attention of the court in this connection the late Mr. Arthur Biddle's excellent statement of the distinction between life and other policies.

Biddle on Insurance, section 4:—

"Insurance in respect of life, which is substantially the purchase by the insured from the insurer of a reversionary interest for a present sum of money, may be defined to be an agreement by the insurer to pay to the insured or his nominee a specified sum of money, either on the death of a designated life or at the end of a certain period, provided the death does not occur before, in consideration of the present payment of a fixed amount, or of an annuity till the death occurs or the period of insurance is ended. And it may be said theoretically to be a contrivance for accumulating for the benefit of the insured by the payment of an annuity or a present sum, the accumulation being paid to the insured or his appointee at the time fixed or contingent upon the event designated and the amount of the annuity or present sum being calculated on the probable duration of the insured's life or period of insurance. Life insurance is not in any sense a contract of indemnity, though in the English case of *Godsall vs. Boldero* it was so held; but that case proceeding on false analogies, after having been almost universally condemned, and its principles not even taken advantage of by the principal life insurance companies of England, was finally reversed in *Dalby vs. India & London L. Assur. Co.* As the contract is not one of indemnity, no interest was necessary, by the common law, to its validity, and wagering contracts of life insurance were clearly valid. But the statute of 14 Geo. III., chapter 48, necessitated in England the existence of an insurable interest in the life, at least at the formation of the contract, and the statute of 29 and 30 Vict., chapter 42 (1866), in Ireland. In most of the courts in the United States a somewhat peculiar

rule prevails. It is generally held that life insurance, though not a contract of indemnity, is still not absolutely a wager, but must have some interest to support it, though the interest need not exist both at the inception and the death, but in Rhode Island and New Jersey the rule of the English common law is maintained. In England the interest has been held to mean a pecuniary interest, while in the United States it has been considered that the interest need not be pecuniary, though what interest is necessary is somewhat uncertain.

"NOTE.—The eminent Baron Parke defined it as 'a mere contract to pay a certain sum of money on the death of a person, in consideration of the due payment of a certain annuity for his life, the amount of the annuity being calculated, in the first instance, according to the probable duration of the life; and, when once fixed, it is constant and invariable.' *Dalby vs. India & Lond. L. Assur. Co.*, 15 C. B., 365, which was approved in *Elliott's Ap.*, 50 Pa. St., 75. Parke, in his book on insurance, defines life insurance to be a contract 'by which the underwriter, for a certain sum, proportioned to the age, health, profession, and other circumstances of that person whose life is the object of insurance, engages that the person shall not die within the time limited in the policy; or, if he do, that he will pay a sum of money to him in whose favor the policy was granted' (in chapter XXII., beginning); Bunyon, as 'a contract in which one party agrees to pay a given sum upon the happening of a particular event contingent upon the duration of human life, in consideration of the immediate payment of a smaller sum or certain periodical payments by another.' *Bunyon on Insurance*, I. In *Comm. vs. Wetherbee*, 105 Mass., 149, 160, it was defined as 'an agreement by which one party, for a consideration (which is usually paid in money, either in one sum or at different times during the continuance of the contract of the risk), promises to make a certain payment of money upon the destruction or injury of something in which the other party has an interest.' In *Scot. Widows' Fund vs. Buist*, 3 C. S. C. (4 ser), 1078, page 1081, Rt. Hon. John Inglis defined it 'as a mutual contract, by which the insurance company or insurance society, on the one hand, come under an obligation to pay a certain sum of money upon the death of the assured, and the assured, on the other hand, becomes bound to pay certain sums, either annually or otherwise, in the name of premiums, and these obligations are counterparts of one another.' "

Biddle on Insurance, section 830:—

"It may be that a contract of insurance would be avoided where the insured commits intentional self destruction or sui-

cide, and while it will be difficult to find any case deciding that it does, there are undoubtedly *dicta* to that effect." Citing—

Moore *vs.* Woolsey, 4 E. & B., 243;
 Horn *vs.* Anglo-Aus. Ins. Co., 30 L. J. Ch., 511;
 Sup. Com. *vs.* Ainsworth, 71 Ala., 436;
 Jarvis *vs.* Ins. Co., 5 Ins. L. J., 507.

"It has indeed been held that the suicide of the insured will not avoid a policy in the absence of a clause against suicide taken out for the benefit of some one else, as a wife, child, &c. Where, however, a policy is taken with the fraudulent intent to take one's own life, a suicide will obviously avoid." Citing—

Fitch *vs.* Ins. Co., 59 N. Y., 557;
 Patrick *vs.* Ins. Co., 67 Barb., 202;
 Mills *vs.* Rebstick, 29 Minn., 380;
 Kerr *vs.* Mut. Ben. Asso., 39 Minn., 174;
 Smith *vs.* Bene. Soc., 51 Hun., 575.

Biddle on Insurance, 837:—

"It has been held that a life policy is not avoided by the fact that the insured suffered death in expiation of a criminal offense unless there is a clause to that effect; but to avoid the obligation to pay on the policy, the act of the insured which produced the event must be done fraudulently for the very purpose of bringing that event about." Citing—

Bolland *vs.* Disney, 3 Rus., 351.

Section 837:—

"Many policies now stipulate for an exception of liability in the event of the insured's dying in, or in consequence of, the violation of the laws. * * * If suicide is not made a crime, it has been held that the insured's suicide does not avoid the policy under the above clause." Citing—

Kerr *vs.* Mut. Benefit Asso'n, 39 Minn., 174;
 Meacham *vs.* Mut. Benefit Ass., 120 N. Y., 237;
 Darrow *vs.* Family Fund Soc., 116 N. Y., 537.

Other writers have taken the same view of the question.

Thus in Bunyon on Insurance:—

"The contract commonly called life insurance, when properly considered, is a mere contract to pay a certain sum of money on the death of a person, in consideration of the due payment of a certain annuity for his life, the amount of the annuity being contributed in the first instance according to the probable duration

of the life, and when once fixed it is constant and invariable. The stipulated amount of annuity is to be uniformly paid on one side and the sum to be paid in the event of death is always (except when bonuses have been given by prosperous offices) the same on the other. This species of insurance in no way resembles a contract of indemnity."

Baron Parke in *Dalby vs. India & London Life Ass. Co.*, 15 C. B., 365.

13 American and English Enc. of Law., 642, title, "Life Insurance," it is said:—

"(5.) SUICIDE.—A provision is usually inserted in life insurance policies exempting the company from liability in case the insured shall commit suicide. It is of varying phraseology, as that the company shall not be liable in case the insured shall 'die by his own act' or 'by his own hand' or 'by suicide.' In the absence of this provision the suicide of the insured will not affect the validity of the policy." Citing—

Fitch vs. American Popular Ins. Co., 59 N. Y., 557;

Patrick vs. Excelsior Life Ins. Co., 4 Hun. (N. Y.), 263;

Kerr vs. Minnesota M. B. Asso., 39 Minn., 174.

"At any rate this is the weight of authority, though the contrary has been decided in Pennsylvania." Citing—

Hartman vs. Ins. Co., 21 Pa. St., 466.

"The question most discussed under this provision has been whether it is applicable to the case of a party taking his own life while insane, and upon this the courts have not reached the same conclusion; certain it is, that where there is no provision of this character, the policy is not vacated by the suicide of the insured when in a state of insanity." Citing—

Horn vs. Anglo-Aus. Ins. Co., 7 Jur. N. S., 673.

"But when the provision under consideration is inserted without any further provision as to whether it shall apply in case the insured shall commit suicide when insane, the question becomes involved in doubt."

Bliss, section 224 (edition 1872):—

"Upon no question in life insurance is there such an irreconcilable conflict of opinion as upon the question of the effect upon the policy of self destruction by the person whose life is insured.

* * * * *

"While in England cases have arisen in which there was no provision in the policy upon the subject (*Horn vs. Anglo-Aus. Ins. Co.*, 7 Jur. N. S., 673), in all the cases in this country and

in the leading ones in England, there has been an express provision in the policy."

Bacon on Benefit Societies and Life Insurance, edition of 1894, section 330:—

"If a sane man deliberately takes his own life it has been contended that it is such fraud upon the insurers as to preclude recovery upon the contract. In practice, however, such cases seldom occur, and it has been held that unless it is so stipulated in the policies suicide is no defense."

Horn *vs.* Anglo-Australian Company, 30 Law Journal, chapter 511, section 337:—

"Where the policy or the constitution and laws of the society or order contain no provision qualifying the right to recover if the insured member takes his own life, suicide is not a defense."

We will also refer the court to certain extracts from the opinions of the court in several leading cases upon policies containing the clauses making the policy void in case of suicide. While the constructions placed by the courts upon that clause have been very diverse, there is a remarkable unanimity in these opinions in stating the reason of the rule in a manner which strongly supports the contention of the plaintiff in error.

In Eastabrooke *vs.* Union Mutual L. I. Co., 54 Maine, 224, Appleton, C. J., said:—

"A creditor may insure upon the life of the debtor, or one may insure upon his own life for the benefit of his family. In no event can the person upon whose life the policy is effected be benefited by his own death.

* * * * *

"That a jury would be likely to regard suicide as proof of insanity does not affect the conclusion. If suicide is to be regarded as evidentiary of insanity, as it unquestionably is in most cases, then they generally arrive at correct results.

* * * * *

"Nor does the case of suicide by one insane fall within the danger to guard against the occurrence of which this condition was inserted. * * * The person whose life is insured never receives money payable after his death. Suicide for the benefit

of others is rare, exceptional, and Quixotic. The love of life, the strongest sentiment of our nature, affords reasonable security against a danger so remotely probable."

In *Borradaile vs. Hunter*, 5 M. & G., 639, Maule, J., in delivering the opinion of the majority upon the effect of the clause "die by his own hands," holding that by the proviso the policy was avoided in all cases of self destruction, even though the insured was insane, said:—

"A policy by which the sum insured is payable on the death of the assured, in all events gives him a pecuniary interest that he should die immediately rather than at a future time, to the extent of the excess of the value of a present payment over a deferred one, and offers, therefore, a temptation to self destruction to this extent. To protect the insurers against the increase of risk arising out of this temptation is the object for which the condition in question is inserted. It ought, therefore, to be so construed as to include those cases of self destruction in which but for the condition the act might have been committed in order to accelerate the claim on the policy, and to exclude those in which the circumstances, supposing the policy to have been unconditional, would show that the act could not have been committed with the view to pecuniary interest. This principle of construction requires and accounts for the exclusion from the operation of the condition of those cases falling within the general sense of its words to which it is admitted not to apply—such as those of accident and delirium. To apply it to the present case, it appears by the finding of the jury, that the testator voluntarily threw himself into the water intending to destroy his life, but that at the time he did so he was not capable of judging between right and wrong; and as a man who drowns himself voluntarily may do it to found a claim on a policy though he may not think it wrong to do so, or though his mind may be so diseased that he does not know right from wrong, which, as I understand the finding of the jury, was the case with the testator, it seems to me that the object of the condition would not be effected unless it comprehended such a case of self destruction."

In *Dean vs. American L. I. Co.*, 4 Allen, 96, in following *Borradaile vs. Hunter*, Bigelow, C. J., said:—

"Although the assured can derive no pecuniary advantage to himself by hastening his own death, he may have a motive to take his own life, and thus to create a claim under the policy in order to confer a benefit on those who, in the event of his death,

will be entitled to receive the sum insured on his life. Unless, then, we can say that such a motive cannot operate on a mind diseased, we cannot restrict the words of the proviso so as to except from the risk covered by the policy only the case of criminal suicide, where the assured was in a condition to be held legally and morally responsible for his acts.

* * * * *

"This view is entirely consistent with the nature of the contract. It is the ordinary case of an exception of a risk which would otherwise fall within the general terms of the policy."

McKenna, Circ. J., in charging the jury in *Nimick vs. Mutual Benefit Association* (1 Bigelow, 689), said:—

"Giving full force and effect to this rule of interpretation, we are unable to see that there is anything unreasonable or inconsistent with the general purpose which the parties had in view in making and accepting the policy, in a clause which excepts from the risks assumed thereby the death of the assured by his own hand, irrespective of the condition of his mind, as affecting his moral and legal responsibility at the time the act of self destruction was consummated. Every insurer, in assuming a risk, imposes certain restrictions and conditions upon his liability. Nothing is more common than the insertion in policies of insurance of exceptions by which certain kinds or classes of hazards are taken out of the general risk which the insurer is willing to incur. Especially is this true in regard to losses which may arise or grow out of an act of the party insured. Such exceptions are founded on the reasonable assumption that the hazard is increased when the insurance extends to the consequences which may flow from the acts of the person who is to receive a benefit to himself or confer one on others by the happening of a loss within the terms of the policy. Where a party procures a policy on his life, payable to his wife and children, he contemplates that, in the event of his death, the sum insured will inure directly to their benefit. So far as a desire to provide in that contingency for the welfare and comfort of those dependent on him can operate on his mind, he is open to the temptation of a motive to accelerate a claim for a loss under the policy by an act of self destruction. Against an increase of the risk arising from such a cause it is one of the objects of the proviso in question to protect the insurers. Although the insured can derive no pecuniary advantage to himself by hastening his own death, he may have a motive to take his own life, and thus create a claim under the policy in order to confer a benefit on those who, in the event of his death, will be entitled to receive the sum insured on his life."

The position of the plaintiff in error upon this point may be summed up as follows:—

1. The action is at law upon a policy of insurance payable upon the death of an individual named. The death has occurred; and the contingency has, therefore, happened upon which payment, by the terms of the contract, was to be made.

2. The form of policy in common use by this defendant and other companies contains a clause of warranty against suicide within ten years after issue, after which time the policy is incontestable. The omission of such clause from the policy in suit must be assumed, therefore, to have been intentional, and to establish an unconditional contract to pay unless some rule of established public policy prevents the payment of life insurance where the life insured is terminated by suicide.

3. There is no rule of public policy which debars such payment. In England by the form of policy in general use, sanctioned by numerous judicial decisions, payments to relatives and creditors are in terms provided for, notwithstanding such suicide.

In the American decisions all the suits, which have arisen on policies not containing a suicide clause, have been where the policy by its terms was payable to a creditor or relative. In every case the courts have ruled that suicide did not avoid the policy. There is no rational distinction between a suit by a creditor or relative as legal plaintiff and a suit by an executor or administrator as legal plaintiff for the benefit of creditors or relatives having the beneficial interest in the proceeds of the litigation.

4. While the precise question raised on this record has not been decided by this court, the opinion in Terry's case (15 Wallace, 580) expressed a view which is approved by reason and sustained by precedent.

SECOND.—EVEN IF IT BE THE LAW THAT SUICIDE BY A SANE MAN AVOIDS A POLICY UPON HIS LIFE, WHAT IS THE DEFINITION OF INSANITY WHICH RELIEVES FROM THAT CONSEQUENCE?

This question is raised by the seventh and ninth assignments of error.

These assignments were as follows:—

Seventh.—The answer to the plaintiff's fifth point, which point and answer are as follows:—

"If one whose life is insured intentionally kills himself when his reasoning faculties are so far impaired by insanity that he is unable to understand the moral character of his act, even if he does understand its physical nature, consequence, and effect, such self destruction will not itself prevent recovery upon the policies."

"This is affirmed. I will say, however, that we must understand what is meant and intended by the term 'moral character of his act.' It is a term which has been used by the courts and is correctly inserted in the point; but it is a term which might be misunderstood.

"We are not to enter the domain of metaphysics in determining what constitutes insanity, so far as the subject is involved in this case. If Mr. Runk understood what he was doing, and the consequences of his act or acts to himself as well as to others, in other words, if he understood, as a man of sound mind would, the consequences to follow from his contemplated suicide, to himself, his character, his family, and others, and was able to comprehend the wrongfulness of what he was about to do, as a sane man would, then he is to be regarded by you as sane. Otherwise he is not."

Ninth.—The learned court erred in charging the jury as follows:—

"I therefore charge you that if he was in a sane condition of mind at the time as I have described, able to understand the moral character and consequences of his act, his suicide is a defense to this suit."

These assignments of error raise the question whether the instructions given by the learned court are in accordance with the law upon this subject as formulated in the decisions of this court.

In discussing this subject we will not go outside of those decisions. The question apart from authority is one upon which much might be said on either side, and the decisions of other tribunals are not in entire harmony. In this case, the rules heretofore formulated by this court, which are much more favorable to the plaintiff than those adopted in certain State courts, control, and the plaintiff in error is entitled to a reversal if the learned judge submitted the cause to the jury with instructions less favorable to the plaintiff than those approved by this court.

In *Life Insurance Company vs. Terry*, 15 Wall, 580, the defendant presented the following points:—

First.—If the jury believe, from the evidence in the case, that the said George Terry destroyed his own life, and that at the time of self destruction he had sufficient capacity to understand the nature of the act which he was about to commit, and the consequences which would result from it, then and in that case the plaintiff cannot recover on the policy declared on in this case.

Second.—That if the jury believe from the evidence that the self destruction of the said George Terry was intended by him, he having sufficient capacity at the time to understand the nature of the act which he was about to commit, and the consequences which would result from it, then and in that case it is wholly immaterial in the present case that he was impelled thereto by insanity, which impaired his sense of moral responsibility, and rendered him, to a certain extent, irresponsible for his action.”

The court refused to give either of these instructions, and charged as follows:—

“It being agreed that the deceased destroyed his life by taking poison, it is claimed by the defendant that he ‘died by his own hand’ within the meaning of the policy, and that they are, therefore, not liable.

“This is so far true that it devolves on the plaintiff to prove such insanity on the part of the decedent, existing at the time he took the poison, as will relieve the act of taking his own life from the effect which, by the general terms used in the policy, self destruction was to have, namely, to avoid the policy.

“It is not every kind or degree of insanity which will so far excuse the party taking his own life as to make the company insuring liable.

“To do this, the act of self destruction must have been the consequence of insanity, and the mind of the decedent must have

been so far deranged as to have made him incapable of using a rational judgment in regard to the act which he was committing.

"If he was impelled to the act by an insane impulse which the reason that was left him did not enable him to resist, or if his reasoning powers were so far overthrown by his mental condition that he could not exercise his reasoning faculties on the act he was about to do, the company is liable. On the other hand, there is no presumption of law, *prima facie* or otherwise, that self destruction arises from insanity, and if you believe from the evidence that the decedent, although excited or angry or distressed in mind, formed the determination to take his own life because, in the exercise of his usual reasoning faculties, he preferred death to life, then the company is not liable, because he died by his own hand within the meaning of the policy."

The opinion of Mr. Justice Hunt, affirming the charge of Mr. Justice Miller, given on the circuit, has ever since been taken as the true statement of the rule upon the subject:—

"The request for instructions made by the counsel of the insurance company proceeds upon the theory that if the deceased had sufficient mental capacity to understand the nature and consequences of his act, that is, that he was about to take poison, and that his death would be the result, he was responsible for his conduct, and the defendant is not liable; and the fact that his sense of moral responsibility was impaired by insanity does not affect the case.

"The charge proceeds upon the theory that a higher degree of mental and moral power must exist; that although the deceased had the capacity to know that he was about to take poison, and that his death would be the result, yet, if his reasoning powers were so far gone that he could not exercise them on the act he was about to commit, its nature and effect, or if he was impelled by an insane impulse which his impaired capacity did not enable him to resist, he was not responsible for his conduct, and the defendant is liable.

* * * * *

"The propositions embodied in the charge before us are in some respects different from each other, but in principle they are identical. They rest upon the same basis—the moral and intellectual incapacity of the deceased. In each case the physical act of self destruction was that of George Terry. In neither was it truly his act. In the one supposition he did it when his reasoning powers were overthrown and he had not power or capacity to exercise them upon the act he was about to do. It was in effect as if his intellect and reason were blotted out or had never

existed. In the other, if he understood and appreciated the effect of his act, an uncontrollable impulse caused by insanity compelled its commission. He had not the power to refrain from its commission, or to resist the impulse. Each of the principles put forth by the judge rests upon the same basis—that the act was not the voluntary, intelligent act of the deceased.

"The causes of insanity are as varied as the varying circumstances of man.

'Some for love, some for jealousy,
For grim religion some, and some for pride,
Have lost their reason; some for fear of want,
Want all their lives; and others every day,
For fear of dying, suffer worse than death.'

"When we speak of the 'mental' condition of a person, we refer to his senses, his perceptions, his consciousness, his ideas. If his mental condition is perfect, his will, his memory, his understanding are perfect, and connected with a healthy bodily organization. If these do not concur, his mental condition is diseased or defective.

"Excessive action of the brain, whereby the faculties become exhausted, a want of proper action whereby the functions become impaired and diminished, the visions, delusions, and mania which accompany irritability, or the weakness which results from an excess of vital functions, indigestion, and sleeplessness, are all the results of a disturbance of the physical system. The intellect and intelligence of man are manifested through the organs of the brain, and from these consciousness, will, memory, judgment, thought, volition, and passion, the functions of the mind, do proceed. Without the brain these cannot exist. With an injured or diseased brain their powers are impaired or diminished.

"We have not before us the particular facts on which the questions of the sanity of Terry were presented. We may assume that proof was given upon which the propositions of the charge were based. We do not know whether he was sleepless, unduly excited, or unnaturally depressed; whether he had abandoned his accustomed habits and pursuits and adopted new and unusual ones; from a quiet, orderly man, had become disorderly, vicious, or licentious; that his fondness for his wife and children changed to dislike and abuse; that jealousy, pride, the fear of want, the fear of death had overtaken him. He may have realized the state supposed by the counsel in arguing *Borradaile vs. Hunter*, viz., that his death might have resulted from an act committed under the influence of delirium, or that in a paroxysm of fever he might have precipitated himself from a window, or having been bled, he might have torn away the bandages. Whether he

swallowed poison or did the other insane acts might result from the same condition of body and mind."

* * * * *

"That form of insanity called impulsive insanity, by which the person is irresistibly impelled to the commission of an act, is recognized by writers on this subject. It is sometimes accompanied by delusions, and sometimes exists without them. The insanity may be patent in many ways, or it may be concealed. We speak of the impulses of persons of unsound mind. They are manifested in every form—breaking of windows, destruction of furniture, tearing of clothes, firing of houses, assaults, murders, and suicides. The cases are to be carefully distinguished from those where persons in the possession of their reasoning faculties are impelled by passion merely, in the same direction.

"We hold the rule on the question before us to be this: If the assured, being in the possession of his ordinary reasoning faculties, from anger, pride, jealousy, or a desire to escape from the ills of life, intentionally takes his own life, the proviso attaches, and there can be no recovery. If the death is caused by the voluntary act of the assured, he knowing and intending that his death shall be the result of his act, but when his reasoning faculties are so far impaired that he is not able to understand the moral character, the general nature, consequences, and effect of the act he is about to commit, or when he is impelled thereto by an insane impulse which he has not the power to resist, such death is not within the contemplation of the parties to the contract, and the insurer is liable."

In *Rodell vs. The Insurance Company*, 95 U. S., 232, the suit was upon a policy dated June 25th, 1873. The insured died December 5th, 1873, from the effects of poison administered by his own hand. Mr. Justice Bradley, in delivering the opinion of the court, said:—

"The following request, and another of substantially the same purport, were refused, namely, that the plaintiff could not recover if the assured knew that the act which he committed would result in death, and deliberately did it for that purpose. An additional request was made to charge that a certain letter, written evidently under great excitement by Rodell to his wife on the day of his death, apprising her of his intention to destroy himself, and his reasons for so doing, based upon his pecuniary troubles and anticipated exposures, bore evidence of coolness and deliberation, and of itself afforded presumptive evidence of sanity at the time when it was written. This request was also refused."

* * * * *

Mr. Justice Bradley then quoted at length from the charge of the court below, which affirmed verbally the instructions previously approved in the Terry case, and then proceeded:—

"This charge is in the very words of the charge sanctioned and approved by this court in the case of Life Insurance Company *vs.* Terry, 15 Wall, 580, including an explanatory opinion of the court in that case. We see no reason to modify the views expressed by us on that occasion. We think, therefore, that there was no error in the charge as given. It follows that the judge properly refused the request to charge that the plaintiff could not recover if the insured knew that the act which he committed would result in death, and deliberately did it for that purpose. Such knowledge and deliberation are entirely consistent with his being, in the language of the charge, 'impelled by an insane impulse which the reason that was left him did not enable him to resist,' and are therefore not conclusive as to his responsibility or power to control his actions."

"The omission to charge as requested, with regard to the letter written by Rodel, is subject to the same considerations, and may be dismissed with only this further remark, that persons of most decided insanity often exhibit consistency of purpose, coolness, and even great ingenuity in the pursuit of some insane object to which they are impelled by the diseased condition of mind with which they are afflicted. An inspection of the letter, however, shows that it is pervaded by a very abnormal degree of excitement; and we think the judge did quite right, even on this ground, to decline the unqualified instruction which was requested in relation to it."

It is to be noted that an examination of the letter addressed by Rodel to his wife indicates an attitude of mind very similar to that disclosed in the letters of Runk, which were offered in evidence. In each case there was the overpowering mental distress consequent upon the uncovering of financial irregularity, and in each case the mind of the deceased looked to the fund produced by insurance as a means of paying his debts and providing for his family. Such evidence, of course, indicates that some of the powers of the mind remained, but Mr. Justice Bradley, in the Rodel case, instead of from that drawing the conclusion of sanity, found in it the evidence of the un-

controllable impulse which is one of the characteristics of this form of insanity.

In *Manhattan Life Insurance Company vs. Broughton*, 109 U. S., 121, Mr. Justice Gray said:—

"The remaining and the most important question in the case is whether a self killing by an insane person having sufficient mental capacity to understand the deadly nature and consequences of his act, but not its moral aspect and character, is a death by suicide within the meaning of the policy. This is the very question that was presented to this court in 1872 in the case of *Life Insurance Co. vs. Terry*, 15 Wall, 580. At that time there was a remarkable conflict of opinion in the courts of England, in the courts of the several States, and in the Circuit Courts of the United States, as to the true interpretation of such a condition. All the authorities agreed that the words 'die by suicide,' or 'die by his own hand,' did not cover every possible case in which a man took his own life, and could not be held to include the case of self destruction in a blind frenzy or under an overwhelming insane impulse. Some courts and judges held that they included every case in which a man, sane or insane, voluntarily took his own life. Others were of opinion that any insane self destruction was not within the condition."

Terry's case is then fully quoted from and reaffirmed, and Justice Gray then proceeded:—

"The necessary effect of giving these instructions, after refusing to give the second instruction requested, was to rule that if the deceased intentionally took his own life, having sufficient mental capacity to understand the physical nature and consequences of his act, yet if he was impelled to the act by insanity which impaired his sense of moral responsibility, the company was liable. That the ruling was so understood by this court is apparent by the opening sentences of its opinion, on page 583, as well as by its conclusion, which, after a review of the conflicting authorities on the subject, was announced in these words:—

" 'We hold the rule on the question before us to be this: If the assured, being in the possession of his ordinary reasoning faculties, from anger, pride, jealousy, or a desire to escape from the ills of life, intentionally takes his own life, the proviso attaches, and there can be no recovery. If the death is caused by the voluntary act of the assured, he knowing and intending that his death shall be the result of his act, but when his reasoning faculties are so far impaired that he is not able to understand the

moral character, the general nature, consequences, and effect of the act he is about to commit, or when he is impelled thereto by an insane impulse which he has not the power to resist, such death is not within the contemplation of the parties to the contract, and the insurer is liable.' Pages, 590, 591.

"In *Insurance Company vs. Rodel*, 95 U. S., 232, the same rule was expressly reaffirmed. In that case the Circuit Court declined to instruct the jury that the plaintiff could not recover if the assured knew that the act which he committed would result in death, and deliberately did it for that purpose; and instead thereof repeated to the jury the instructions of the Circuit Court in Terry's case, and the conclusion of the opinion of this court in that case, as above quoted."

And in the last judgment upon this subject, *Connnecticut Mutual Life Insurance Company vs. Akens*, 150 U. S., 468, which went up from the Western District of Pennsylvania, and in which the rulings of the circuit judge who tried the cause were affirmed, it appears from the report that the policy was dated January 14th, 1887, and Smith died by his own act on February 23d, 1887. The evidence having closed, the defendant requested the court to instruct the jury as follows:—

"First.—If the jury believe from the evidence in the case that Smith, the insured, destroyed his own life, and that at the time of the self destruction he had sufficient capacity to understand the nature of the act which he was about to commit, and the consequences which would result from it, then and in that case the plaintiff cannot recover on the policy sued on in this case.

"Second.—If the jury believe from the evidence that the self destruction of the said Smith was intended by him, he having sufficient capacity at the time to understand the nature of the act which he was about to commit, and the consequences which would result from it, then and in that case it is wholly immaterial in the present case that he was impelled thereto by insanity which impaired his sense of moral responsibility and rendered him to a certain extent irresponsible for his action.

"Third.—If the jury believe from the evidence that Smith's life was ended February 23d, 1887, by means of laudanum poison administered by himself to himself, the plaintiff cannot recover on the policy sued on in this case, unless the jury believe also from the evidence that the self destruction aforesaid of said Smith was the direct result of disease or of accident occurring without his voluntary action.

* * * * *

"The court declined to give the first, second, and fourth instructions requested, and upon the third request instructed the jury as follows:—

"The third point is affirmed, with this exception: that if the act of self destruction was the result of insanity, and was with suicidal intent, and the mind of the insured was so far deranged as to have made him incapable of using a rational judgment in regard to the act he was about to commit, the defendant is liable; but if he was impelled to the act by an insane impulse, which the reason that was left him did not enable him to resist, or if his reasoning powers were so far overthrown by his mental condition that he could not exercise his reasoning faculties on the act he was about to commit, the defendant is liable. If from the evidence you believe that the insured, though excited or angry or depressed in mind from any cause, formed the determination to take his own life because in the exercise of his usual reasoning faculties he preferred death to life, then the defendant is not liable."

"To this qualification of the third instruction, as well as to the refusal to give each of the other instructions requested, the defendant excepted, and, after verdict and judgment for the plaintiff for the amount of the policy, sued out this writ of error."

In delivering the opinion and affirming the rulings of the Circuit Court, Mr. Justice Gray said:—

"This case is governed by a uniform series of decisions of this court, establishing that if one whose life is insured intentionally kills himself when his reasoning faculties are so far impaired by insanity that he is unable to understand the moral character of his act, even if he does understand its physical nature, consequence, and effect, it is not a 'suicide,' or 'self destruction,' or 'dying by his own hand,' within the meaning of those words in a clause excepting such risks out of the policy, and containing no further words expressly extending the exemption to such a case.

Life Ins. Co. vs. Terry, 15 Wall, 580;

Bigelow vs. Berkshire Ins. Co., 93 U. S., 284;

Insurance Co. vs. Rodel, 95 U. S., 232;

Manhattan Ins. Co. vs. Broughton, 109 U. S., 121;

Connecticut Ins. Co. vs. Lathrop, 111 U. S., 612;

Accident Ins. Co. vs. Crandal, 120 U. S., 527.

"In the case at bar the first two instructions were exactly like those held to have been rightly refused, and the modified instruction given upon the third request was substantially like that held to have been rightly given in Terry's case, in which the words of exemption were 'die by his own hand.' That decision

was followed and approved in Rodel's case and Lathrop's case, in each of which the words were the same; and in Broughton's case, in which the words were 'die by suicide,' and the court, treating the two phrases as equivalent, expressed the opinion that 'the rule so established is sounder in principle, as well as simpler in application, than that which makes the effect of the act of self destruction, upon the interest of those for whose benefit the policy was made, to depend upon the very subtle and difficult question how far any exercise of the will can be attributed to a man who is so unsound of mind that, while he foresees the physical consequences which will directly result from his act, he cannot understand its moral nature and character, or in any just sense be said to know what it is that he is doing.' 109 U. S., 131.

* * * * *

"And in making out such proof the plaintiff is entitled to the benefit of the presumption that a sane man would not commit suicide, and of other rules of law established for the guidance of courts and juries in the investigation and determination of facts. Travellers' Insurance Co. *vs.* McConkey, 127 U. S., 661-667."

A reading of the rulings in the various courts in which these cases were tried, and the opinions of this court, show very clearly a different standard of insanity from that which must necessarily be accepted upon the definition of the learned judge who tried the present cause. In all these cases the impairment not only of the moral vision, but also of the *will*, so as to leave the deceased in a condition that he was *unable to resist* the impulse of self destruction, is accepted as an insanity or mental unsoundness sufficient to relieve him from the charge of felonious suicide. The recent case of Davis *vs.* United States, 165 U. S., 373, approves a definition of insanity which contains the element for which we contend.

"The term 'insanity' as used in this defense means such a perverted and deranged condition of the mental and moral faculties as to render a person incapable of distinguishing between right and wrong, or unconscious at the time of the nature of the act he is committing; or where, though conscious of it and able to distinguish between right and wrong and know that the act is wrong, yet his will, by which I mean the governing power of his mind, has been otherwise than voluntarily so completely destroyed that his actions are not subject to it, but are beyond his control."

In this definition the *continued existence of a governing will* is recognized as essential to sanity as distinguished from insanity.

The charge of Judge Butler enforces a much stricter rule, and mental perception of consequences and mental consciousness of wrongfulness, irrespective of moral power to resist, according to the charge, was sufficient to place the deceased in the category of a felonious suicide. This inadequate statement of the rule, especially in the light of the evidence which had been adduced, was necessarily most damaging to the case of the plaintiff, and the point made is one which is best appreciated by comparing the charge of the learned judge delivered to the jury in this case, and appearing in full on pages 139-142 of the record, with the charges in the cases to which reference has been made and the opinions of the Supreme Court in affirming those charges. That the unfortunate man was within the class of those who are impelled to death by an insane and irresistible impulse which his weakened mental and moral powers could not withstand, is best evidenced by the letters to Darlington and Nice (pages 53 and 59 of the Record):—

"MY DEAR JOSEPH:

"I have grossly deceived you and can only pay my debts by my life. * * * This is a sad ending of a promising life; but I deserve all the punishment I may get, only I feel my debts must be paid. This sacrifice will do it, and only this."

"WILLIAM:

"Do all you can for Mrs. Runk and see that I have a quiet funeral. I am driven to this, but I have tried to be a friend to you. Don't talk to any one."

When these letters, written on October 5th, 1892, the day of his death, are read in connection with a letter written the day before to his friend, George C. Thomas (page 123 of the Record), in the closing paragraph of which he alludes to a young nephew of Mr. Thomas, whose death by suicide was announced in the morning paper:—

"I do not know what to say in regard to the news in the morning paper concerning J. B. M. It is certainly a sad ending, and,

as we all know, the young man has gone his own way, regardless of all the influences and interest which you and Mrs. Thomas, as well as others, have tried to have over him."

To a morbidly sensitive mind such as that which Runk undoubtedly had, whose normal tone was lost in the depression and mortification consequent upon the circumstances detailed at length in the testimony of Mr. Darlington (pages 97-102 of the Record), the suggestion which came from the suicide of this young man—whom he knew well—was the impulse which, once started, carried him with irresistible force to his death. This aspect of moral insanity—an insanity whose distinguishing element was the impairment of "the governing power of the mind"—which was present in the facts of the case, and which is clearly and expressly recognized in the opinions of the Supreme Court already cited, was eliminated from the consideration of the jury by the charge of the court as given.

The eleventh assignment of error is as follows:—

"II. The learned court erred in charging the jury as follows: 'While I thus submit the question and remind you that the responsibility of deciding it rests upon you alone, I consider it a duty to say that I do not regard the evidence on which the plaintiff relies as strong.'"

In thus charging the jury the learned judge adopted a view of measure of proof necessary to satisfy a jury of insanity when offered as a defense to what is in effect a prosecution for felony, which does not accord with the views of this court as expressed in *Davis vs. The United States*, 160 U. S., 469. In that case it was held that while there is in the absence of evidence a presumption of sanity, yet when evidence has been adduced tending to show insanity so that the question of sanity or insanity is an issue to be determined by the jury upon the evidence before them, that then the burden of proof is upon the party who charges the commission of a crime not only to show the physical fact of the killing, but that the killing was done by one of sound mind. The failure to recognize this principle permeated the entire charge of the court below

and was emphasized in the instruction which is the subject of this assignment of error, an instruction which, given with the vigor which characterizes everything which comes from the bench presided over by the learned judge who tried the case, was the controlling force in securing the verdict for the defendant in the present case.

THIRD.—WAS THERE EVIDENCE TO GO TO THE JURY TENDING TO PROVE THAT PRIOR TO TAKING OUT THE POLICIES OF INSURANCE, RUNK HAD CONCEIVED THE FRAUDULENT DESIGN OR EFFECTING POLICIES TO THE END THAT HE MIGHT TAKE HIS OWN LIFE FOR THE BENEFIT OF HIS CREDITORS AND FAMILY?

This question is presented by the first, second, third, and fourth assignments of error.

These assignments were as follows:—

“*First.*—The admission of the evidence of Ralph F. Culinan contained in the following offer:—

“ ‘MR. JOHNSON:—I propose to prove the date anterior to the issuance of this policy of the appropriation of Mr. Runk of the securities of the City Mission in his hands as treasurer.

“ ‘(Objected to, on the ground that the mere proof of indebtedness does not indicate any intention whatever to take one’s own life.)

“ ‘THE COURT:—This is one of the circumstances that must be heard. Its value, or whether it really has any value, could not be considered at this time. The court will have to hear it, and reserve for after consideration what weight it should have, or whether it should have any. We may be asked to rule it out, and, if so, we will consider it.)’

“*Second.*—The admission of the evidence of William G. Hopper contained in the following offer:—

“ ‘MR. JOHNSON:—I propose to prove that this witness is a creditor of the estate to the amount of \$7756.88, which credit is due to him in the course of speculative stock transactions and the time of their commencement, and that for two or three years anterior to this Mr. Runk was speculating and making and losing largely.’

“*Third.*—The refusal of the court to affirm plaintiffs’ first point, which point was as follows:—

“ ‘The evidence is not sufficient to warrant the jury in finding that the deceased entered into the contracts of insurance evi-

denced by the policies sued upon with the intention of defrauding the company defendant issuing the same."

"Fourth.—The refusal of the court to affirm plaintiff's second point, which point was as follows:—

"The evidence is not sufficient to warrant the jury in finding that the deceased entered into the said contracts of insurance with the intention of committing suicide."

Evidence similar to that covered by the first and second assignments was subsequently admitted, all of which is open to the same objection, but was not specifically objected to in view of the rulings of the court which are assigned for error.

These assignments may be properly considered together, because they raise the question whether there was any evidence in the cause which would have justified the jury in finding that the policies in suit had been taken out by William M. Runk with the fraudulent purpose of ending his life by his own hand.

The evidence offered and admitted under objection, referred to in the first and second assignments of error, and all the similar evidence following it, might have been competent had it been followed by other evidence tending to show that the suicidal intent had been formed in November, 1891. No such further evidence was offered, and the plaintiff was entitled to an unqualified affirmation of his first and second points, mentioned in the third and fourth assignments.

In discussing this branch of the case we desire to be understood as fully admitting the proposition of law that if William M. Runk obtained the issue of the policies in suit with the then formed purpose of ending his life by suicide, no recovery can be had on the policies. The law upon this point has been very accurately stated in *Smith vs. National Benefit Society*, 123 N. Y., 85, in which the court said:—

"In answer to the plaintiff's demand for the sum payable by the defendant's policy of life insurance, the company took upon itself the difficult burden of proving that the assured perpetrated a deliberate fraud, planned upon a broad scale, and accomplished by taking his life. That his efforts to achieve success failing,

and a future of poverty and debt seeming to await him, he determined to secure a large insurance upon his life, appropriated to the payment of his creditors and the comfort and support of his relatives, and reach the result by suicide. The difficult burden was successfully borne, as a verdict of the jury has determined, and the sole inquiry now is whether the scope and range of the evidence admitted, showing the acts and declarations of the assured, transcended the lawful limit or violated the rules of evidence." * * * After reviewing the evidence, showing that the intent to commit suicide was clearly formed prior to the issuing of the policies, the court said:—

"These acts and declarations all occurred before the plaintiff took his policy as collateral, and when they affected no one but Tyler himself. They tended to show the origin and progress of the fraudulent intent, the manner of its growth, and the motives from which it sprung. They indicate a sane and deliberate purpose, moving steadily to its result, and constitute part of the history of the fraud. They were contemporaneous with the fraud in its formative stages. They accompany Tyler's efforts to raise money, which failed, and the procuring of an insurance upon his life which he knew he could not continuously maintain. They show the motive of the fraud and mark its progress, and harmonize so completely with all which afterward occurred as to constitute, with that, elements of a single transaction—the fraudulent conduct which raised the issue presented by the defendants; and so I think the proof came fairly within the rule relating to *res gesta*, and did not transcend its limit. Some of this evidence was resisted upon the ground that death by suicide was no defense under the terms of the policy. That is true; but the defense was fraud, and suicide the ultimate agent by which the fraud was accomplished. It was necessary, therefore, to prove it, and in such manner as to indicate that it was not an insane or sudden impulse, but the culmination and effective working out of a deliberately conceived purpose of fraud."

Upon establishing this proposition of fact, the defendant in opening principally rested its case. See opening of defendant's counsel, Record, 26, 27.

"Therefore when these policies were taken out he was insolvent to the extent, as I have said, of upwards of \$350,000, and insolvent by being a defaulter, by having embezzled the funds of the charity of which he was the treasurer and of the firm to which he belonged.

"He appeared to be one of those men who would sooner face death than disclosure of his dishonor and his disgrace, and having at the time these policies were taken out some \$250,000 to

\$300,000 of policies already on his life, which cost him from \$10,000 to \$12,000 a year to carry, but which were insufficient to pay his debts and to make good his embezzlements, he seemed to have conceived the idea of taking out additional insurance to the extent of some \$200,000 more, making his total insurance from \$450,000 to \$500,000, for the purpose of raising a fund which, if the thing came to an end, as was certain, he could, by reason of his death, pay these creditors and pay these embezzlements, and so clear, as far as he could, his memory.

"Therefore our claim is, that this was a deliberate attempt by a man in full possession of his faculties to defraud this insurance company by obtaining these policies to a large amount and then to commit suicide and have his estate collect for the benefit of these creditors the amount which he was a defaulter.

"We will show that being, as I say, insolvent to that extent, having already some \$10,000 to \$12,000 per annum to pay to keep up these policies, he contracted these additional policies, including this \$75,000, to the extent of \$200,000, requiring him, an insolvent man, to pay about \$8000 a year additional, and of course never intended that those payments, which could not last long, would last long, but that by his deliberate suicide he would end the payment of the premiums and acquire for his estate the amount of the policies."

The evidence adduced on behalf of the defendant absolutely failed to establish this defense. On the contrary, the fact is established that Runk's consent to the issue of the policies was wrung from him only by the most persistent importunity of an agent, who flattered the vanity of Mr. Runk and held before him the inducement that by taking these policies he would be the third largest insurer in the United States. (Record, pages 83, 84, 85.) The fact is also established that Runk took his life within a few hours after his partner, Darlington, had discovered and disclosed to Runk his knowledge of certain irregularities which Runk had been guilty of in the conduct of the business of Darlington, Runk & Co.; but these irregularities were almost entirely committed after the issue of the policies in suit, and after charging the aggregate amount of moneys covered by them, Runk was still a solvent partner on the books of the firm, so that the circumstances which precipitated his death had no existence in the preceding year, when the policies were

taken out. It is true that there was evidence of irregular conduct upon Runk's part, as treasurer of the City Mission, which ran back for a number of years prior to his death, but there was no evidence to justify the conclusion that in November, 1891, his embarrassments had in any way rendered him desperate, or even were calculated to cause despair; on the contrary, in November, 1891, Mr. Runk's interest in Darlington, Runk & Co. was much more than sufficient to pay his debt to the City Mission, and his only other debt—that to his aunt, Mrs. Barcroft—was then fully secured by life policies taken out many years before.

Indeed the evidence so clearly showed that the inducing causes of the suicide were in fact all occurring within a week of Runk's death, on October 4th, 1892, that in submitting the case to the jury the prominent issue submitted was not the issue of fraud in the inception of the policies, but that of sanity at the time of death. This is shown by the charge of the court to the jury. Record, page 139, &c.

The court expressly limited the issue as follows (Record, page 139): "The only question therefore for consideration is this question of sanity. There is nothing else in the case. The only question is whether or not he was in a sane condition of mind, or whether his mind was so impaired that he could not understand the character and consequence of the act he was about to commit." Thus the question of fraud in taking out the policy having dropped from the case from the failure of the defendant in any degree to maintain the defense in this issue, the court below, when requested to do so by defendant's first and second points, should have so instructed the jury. The refusal of the court to affirm these points was in substance saying to the jury that there was evidence of fraud in the inception of the policy, and thus submitting to the jury a question which would have warranted them in finding a verdict for the ~~defendant~~ if they chose to consider the evidence upon that point sufficient, because, as has been said above, it is not denied that if the evidence on

that point were sufficient for submission to the jury, such evidence would warrant a finding for the defendant, inasmuch as such fraud would defeat the plaintiff's right to recover. It was, therefore, clearly the duty of the court not only to affirm the plaintiff's first and second points, but in express terms to withdraw from the consideration of the jury all evidence which had been admitted under the defendant's offer to show fraud in the inception of the contract.

In *Waldron vs. Waldron*, 156 U. S., 361, the court said:—

"We come now to the last contention, which is this, that, conceding misuse was made of the record and other evidence, yet, as the misuse was corrected by the final charge of the court, therefore the error was cured. Undoubtedly it is not only the right but the duty of a court to correct an error arising from the erroneous admission of evidence when the error is discovered, and when such correction is made it is equally clear that, as a general rule, the cause of reversal is thereby removed."

State vs. May, 4 Dev. (Law), 330;

Goodnow vs. Hill, 125 Mass., 587, 589;

Smith vs. Whitman, 6 Allen, 562;

Hawes vs. Gustin, 2 Allen, 402, 406;

Dillin vs. People, 8 Michigan, 257, 360;

Specht vs. Howard, 16 Wall, 564.

"There is an exception, however, to this general rule, by virtue of which the curative effect of the correction, in any particular instance, depends upon whether or not, considering the whole case and its particular circumstances, the error committed appears to have been of so serious a nature that it must have affected the minds of the jury, despite the correction by the court. The rule and its exception were considered in *Hopt vs. Utah*, 120 U. S., 430, 438, where the foregoing authorities were cited, and the principle was thus stated by Mr. Justice Field: 'But, independently of this consideration as to the admissibility of the evidence, if it was erroneously admitted its subsequent withdrawal from the case with its accompanying instruction cured the error. It is true that in some instances there may be such strong impressions made upon the minds of the jury, by illegal and improper testimony, that its subsequent withdrawal will not remove the effect caused by its admission; and in that case the original objection may avail on appeal or writ of error. But such instances are exceptional.'"

Under this ruling it was, as has been said, clearly the duty of the trial judge, as far as lay in his power, to remove from the minds of the jury the impression which must have been created by the testimony in question. That testimony occupied the first two days of the trial of the case, and was of a kind which would naturally leave a deep impression upon the minds of jurymen. A vicious attack was made upon the method of life of Mr. Runk, his various speculative transactions were fully ventilated, his relations with the church and Sunday-schools, and his embezzlement of certain sums of money intrusted to him for one of these institutions were held up before the jury as evidences of hypocrisy, dishonesty, and double dealing. Counsel for the defendant made full reference to this testimony in his argument to the jury, and every inference calculated to inflame the minds of the jury against the plaintiff's case was drawn from it, and the jury were asked to balance the rights of the parties as between creditors created by the kinds of speculation and conduct which this testimony showed and the insurance company, which was now asked to pay the amount of the policies, the proceeds of which should go to meet this indebtedness. At the conclusion of an argument of this kind it was clearly the duty of counsel for the plaintiff to ask the court, inasmuch as the evidence had failed to maintain the proposition of fraud in support of which it was offered, to expressly withdraw the question from the jury. The refusal to do so, it is submitted, was clearly grave error.

If the only issue in this cause was the sanity or insanity of Runk at the time of his death, the plaintiff was entitled to have this issue submitted without the introduction of evidence immaterial to the issue of sanity, but which might have been material in the issue of fraud in taking out the policy.

In a very recent case, *R. R. Co. vs. O'Reilly*, 158 U. S., 334, a judgment was reversed for permitting immaterial evidence to go to a jury, the injurious effect of which was much less apparent than that admitted in this case, Mr. Justice Shiras saying:—

"It is impossible to say that the defendant's case was not injuriously affected by the admission of the evidence, and while an appellate court will not disturb a judgment for an immaterial error, yet it should appear beyond a doubt that the error complained of did not and could not have prejudiced the rights of the party duly objecting."

Deery *vs.* Tray, 5 Wall, 795;
Gilmer *vs.* Higley, 110 U. S., 47.

The case of the plaintiff in error therefore shows:—

First.—An erroneous instruction that suicide avoided the obligation to pay under the policies, even though no condition or clause was inserted in the contract.

Second.—An erroneous instruction calculated to mislead the jury as to what is sanity or mental unsoundness within the meaning of the law in cases of this class.

Third.—Clear error in submitting to the jury the question of fraud in the taking out of the policies, there being no evidence tending to support such a finding.

JNO. HAMPTON BARNES,
RICHARD C. DALE,
GEO. TUCKER BISPHAM,
For Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES.

October Term, 1895. No. .

EX PARTE A. HOWARD RITTER, EXECUTOR OF WILLIAM M. RUNK, DECEASED.

*Answer of the Mutual Life Insurance Company of New York
to the petition for a writ of certiorari requiring the Circuit
Court of Appeals for the Third Circuit to certify to the Supreme
Court of the United States for its revision and determination
the writ of error taken by A. Howard Ritter, executor of
William M. Runk, deceased.*

TO THE HONORABLE THE SUPREME COURT OF THE UNITED
STATES:

The answer of the Mutual Life Insurance Company of
New York respectfully represents:—

This case was tried in the court below by the district judge,
the Hon. William Butler. It was unanimously affirmed in
the Circuit Court of Appeals by a court constituted of the
two circuit judges, Hon. M. W. Acheson and Hon. George
M. Dallas, and of the district judge, Hon. E. T. Green.

A unanimous decision of two circuit judges and of two
district judges sustains the ruling.

The case of the *Ætna Life Insurance Company vs. Florida*
is immaterial, in view of the fact that as the Missouri statute
had settled the public policy of the State, no question of such
policy could be raised, as a thing could not be said to be

against the public policy of a Commonwealth which was sustained by its legislation.

The decedent, Runk, secured enormous insurance upon his life at a time when he was insolvent and an embezzler, and when it was impossible for him to maintain payments of the moneys which, thereafter, would require to be periodically paid. It was apparent that his intention was to secure insurance for the purpose of liquidating the large sums which he had embezzled and which he owed. His letters, written before his death, conclusively established a fact which was not practically controverted by testimony, *i. e.*, that he was sane and meant to commit suicide for the expressed purpose of liquidating his defalcations and indebtedness out of the insurance moneys.

The brief submitted by the respondent in the Circuit Court of Appeals is attached hereto.

CHARLES P. SHERMAN,
JOHN G. JOHNSON,
*Attorneys for Mutual Life Insurance
Company of New York.*

IN THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD DISTRICT.

*A. Howard Ritter, executor of the
estate of William M. Runk, de-
ceased, Plaintiff in Error,*

vs.

*The Mutual Life Insurance Com-
pany of New York, Defendant in
Error.*

Of September Term,
1895.

No. 2.

BRIEF FOR DEFENDANT IN ERROR.

I. COUNTER STATEMENT OF FACTS.

William M. Runk, until his death by suicide, on the 5th October, 1892, occupied a most respectable position in this city. He was the treasurer of several religious charities, and of the City Mission, and was a member of the firm of Darlington & Runk, which did a large business as retailers of dry goods.

Many years before his death he originated this firm, into which he put \$100,000, borrowed, largely, from his aunt, Mrs. Barcroft. By the articles of partnership, he was obliged to allow this to remain, permanently.

He had borrowed from his aunt not only a part of his partnership contribution, but also securities to her belonging, which he had hypothecated. Anterior to November, 1891, he was indebted to her to the amount of about \$135,000.

The insurance in controversy was issued on the 10th November, 1891. At the time of its issuance he does not appear

to have owned any property other than his interest in the firm, saving his country seat, very largely mortgaged, and the furniture therein. In point of fact, his interest in the firm was not, at that time, quite intact, because he had already commenced withdrawing money surreptitiously from the firm, which withdrawal he had concealed by causing the firm's indebtedness to divers creditors to appear settled, though the checks in their favor had been withheld. By this device the bank deposit did not appear overdrawn, despite the fact that he had checked thereon for his private benefit. (Record, 113.)

At that time, however, he was a defaulter, as treasurer of the City Mission, to the extent of between \$50,000 and \$86,000. This default had been brought about by his misuse of cash and securities to it belonging. Its securities had been pledged with various banks and trust companies as collateral security for his individual notes. Loans or bonds which he had collected and misappropriated were allowed to stand upon his books as if unpaid. Though Darlington & Runk, who, in 1885 or 1886 (Record, 55), had borrowed \$20,000 from the City Mission upon their note, had refunded this amount to Runk, as treasurer, within a year, he had failed to cancel the note or to enter the cash he had received therefor to the credit of the mission. The exact time at which he commenced to appropriate the securities of the Mission was not fixed, but there was proof that there had been some misappropriations as early as 1886, and that they had continued for years, for as late as May 31st, 1889, Runk had misappropriated, by using as collateral for his individual notes, \$6000 Philadelphia, Wilmington and Baltimore trust certificates belonging to the Mission. (Record, 62-4, 72-3.)

Mrs. Barcroft, as collateral security for her loan of about \$135,000, held policies of insurance to a like amount on the life of Runk. In November, 1891, policies of insurance upon his life were outstanding, including those held by Mrs. Barcroft, to the extent of \$315,000. The annual premiums thereon amounted to upwards of \$12,000 per annum. By the articles of partnership Runk, who was living extravagantly, was allowed to withdraw but \$700 per month.

In November, 1891, therefore, Runk was indebted to the extent of nearly \$215,000, though he possessed tangible assets to no greater extent than an apparent interest of \$100,000 in his firm.

At that time, being engaged in heavy stock gambling, which he continued until his death, he took out additional insurance upon his life, including \$25,000 which was put in the name of his wife, to the extent of about \$195,000, which entailed payment of an additional annual premium of nearly \$8000. Such was his inability, at that time, to provide for this insurance, that he paid the annual premium upon the policy in the appellee company, by inducing one Pierce to become responsible therefor, upon his giving him part of what was required to be paid in cash, and the residue in store orders on Darlington & Runk, a portion of which remained unliquidated at the time of his death.

During the year following the taking out of the additional insurance, Runk met his stock-gambling losses by a continuance of the plan previously begun, *i. e.*, by drawing checks upon the firm's money in apparent settlement of creditor accounts; by causing these accounts to be entered as paid; and by keeping the bank balance in apparently proper condition, notwithstanding money surreptitiously drawn by him, upon his private account, by withholding these checks from the creditors.

Darlington was absent in Europe, leaving Runk in charge of the store, for some months, until the 28th September, 1892. Having heard from his bank, upon his return, something which excited his suspicion, he brought it to the attention of Runk, who partly admitted, and partly misrepresented, what he had done in the matter. Later, Darlington learned the entire truth, though Runk endeavored to deceive him as long as possible.

Until the day of his death, Runk continued at the store, attending to business. He was found in his stable, dead, on the evening of the 5th October, 1892, having left certain letters which were put in evidence, written on that or on the previous day. The longest of these letters (Record, 32-3-4-5) was

addressed to his executor, Ritter. In it he inclosed the fullest information as to his life insurance; as to his indebtedness; as to the amount of securities which had been misappropriated; and as to the manner in which his affairs were to be liquidated out of the insurance moneys. A portion of this letter read thus:—

MY DEAR FRIEND:—In one of the early clauses of my will I direct all my debts and loans shall be paid.

I will try to enumerate the indebtedness in the order to be paid.

First.—My account in the firm is overdrawn \$86,000, which I want replaced with first insurance amounts that you receive.

Second.—I have left in the small closet in the safe a list of amounts I owe to make P. E. City Mission account good: \$20,000 is in notes of \$10,000 each signed by D. R. & Co., and endorsed Mary A. Barcroft; this I owe and please pay. Then several securities have matured and I owe for them as enumerated. These also are referred to. I have some in loan with Beneficial Saving Fund Society and Pa. Co., please redeem and restore.

Third.—I owe Mrs. Barcroft 96M \$30,000, in securities for which she holds life insurance policies; please adjust these.

The 10,000 B. & P. Bonds are I think at Beneficial S. F.

12,000 N. & Western " " " Phila. S. F.

5,000 P. & R. " " " "

5,000 " \$3,000. Kilbreth, Far. & Co., N. Y. Phila. office,
C. D. Barney & Co.

\$2,000. Tucker & Co., Phila.

Of course, the 126,000 or 128 will be arranged with insurance money.

A letter to one of his employees, Nice, to whom he had given directions to come to his house in the country, on the evening of the day he shot himself, read thus (Record, 59):—

LLANDEILO.

WILLIAM:—Do all you can for Mrs. Runk, and see that I have a quiet funeral. I am driven to this, but I have tried to be a friend to you. Don't talk to anyone.

Yours truly,

WILLIAM M. RUNK.

TUESDAY, October 6, 1892.

A letter to Mrs. Barcroft (Supplement, page 41) read thus:—

ST. DAVID'S, PA.,
LLANDEILO.

MY DEAR AUNT MARY:—Forgive me for the disgrace I bring upon you, but it is the only way I can pay my indebtedness to you. A. Howard

Ritter will attend to all my affairs with Evelyn. You have always told me my mind was not strong. I have been led astray, have been infatuated with speculation and lost. I worked too hard. I am wild but cannot recover now.

Thank you for all you have been to me in every way. Forgive.
Affectionately

TUESDAY Oct. 6, 92.

WM.

A letter to his partner, Darlington (Record, 53), read thus:—

MY DEAR JOSEPH:—I have grossly deceived you and can only pay my debts by my life. The Girard Bank is overdrawn \$20,000, F. & M. \$20,000, N. A. \$18,000, Tradesmen's \$16,000, Fourth Street, \$6,000; \$86,000.

To make these amounts good you will find checks drawn and not sent in Arthur's hands in compartment in the safe, my top corner closet, in an envelope. These checks with balance in each bank have kept showing fair to good. Howard Ritter is my executor, and I have given him instructions to make these \$86,000 good from my first insurance payments.

The money on loans he is to pay also, and you may in Farr's small book charge to me. This is a sad ending of a promising life, but I deserve all the punishment I may get, only I feel my debts must be paid. This sacrifice will do it, and only this. I was faithful until two years ago. Forgive me. Don't publish this.

After Runk's death, it was found that the liquidation entailed the necessity of selling the stock in hand to the surviving partner at a discount of thirty per cent., and left him indebted to the latter, after all his interest in the firm had been appropriated, about \$69,000. Upon this basis of liquidation his interest in the firm in November, 1891, would have been worth very much less than \$100,000.

If all the insurance money be collected, it will little more than suffice to pay the unliquidated indebtedness. The amount due to the City Mission was paid, subsequent to the death of Runk, by Mrs. Barcroft, who took an assignment of its claim, after she had been able to liquidate the entire indebtedness due to herself, by collection of the policies of life insurance which she held.

At the time the additional policies were taken out by Runk, he signed an application in which, *inter alia*, he said (Record, 20):—

I also warrant and agree that I will not die by my own act, whether sane or insane, during the said period of two years.

A copy of this application was not attached to the policies, and there was no proof that it had ever been attached.

The insurer was a New York corporation, which promised to pay "at its home office in the State of New York" upon the death of Runk, in consideration of a recited annual premium then paid in advance and to be paid "thereafter to the company at its home office in the city of New York on the tenth day of November in every year during the continuance of this contract." (Record, 17.)

The policy was thus attested (Record, 18):—

In Witness Whereof, the said The Mutual Life Insurance Company of New York has caused this policy to be signed by its president and secretary at its office in the city of New York.

The company, in New York, accepted the risk, and mailed the policy to its general agent. It was argued on behalf of the company that the contract was a New York contract, delivered in New York, and to be performed in New York. The learned judge, however, overruled this claim and refused to permit the application to be given in evidence.

We will not waste time by quoting from the testimony to show that it was not sufficient to establish unsoundness of mind at the time of the suicide. The jury found that it was not, and this court knows that such a verdict is alone possible under very exceptional circumstances. The only witnesses called in favor of the insanity theory were the wife and sister in law. Their testimony was of the most meagre and insufficient character. In reply to a question from the learned trial judge, the wife (Record, 124) answered thus:—

Q. It might be interesting to know whether you formed this opinion of his mental condition before his death? A. I noticed many things strange. Q. You have given us your judgment of his mental condition based on what you observed. Did you form the opinion which you have expressed that his mind was unbalanced before his death or afterwards? A. Afterwards. Q. Then the act of committing suicide had something to do with the conclusion you reached? A. It had.

No one was found, out of the large number of people, in the store and elsewhere, who had conversed and done business with Runk, during the last days of his life, to express an

opinion that he was insane. The little testimony offered by the appellant really established sanity. It amounted to proof of sanity, save the little distraughtness of manner, easily explained by the circumstances which existed.

II. APPELLEE'S ARGUMENT.

The appellant, by what he says, seeks to leave upon the mind of the court an impression that the learned trial judge felt that the case was one which required more study and argument than he was able to give to it, and that his conclusion was one which he dubiously entertained. Such impression, if left, would be erroneous. The learned trial judge felt the importance of the case, both because of the principle and of the amount of money involved. The only doubt, however, which he entertained, at the trial, was, whether his judgment ought not to be affected by decided cases to the contrary. He was so well satisfied, however, in the end, that there were no such cases, that when the matter came up for argument upon the motion for a new trial, he acquiesced in the suggestion of the learned counsel for the appellant, that it would not be worth while, as his convictions appeared to be settled, to consume time in further discussion. In consequence of the certainty of the conviction he then entertained, no argument was then had, and the motion was refused.

Again the appellant fails to convey to this court the real fact of the case, when he says that "the defense in the opening was rested principally upon an allegation that the policies "had been obtained by Runk with a fraudulent intent," &c., and that the contention that there was a fraudulent intent in taking out the policies was abandoned because there was not a *scintilla* of evidence to support it.

The affidavit of defense (Record, 21) set up the defense of fraudulent intent in securing the policies as well as the defense ultimately submitted, alone, to the jury. It reads, *inter alia*, thus:—

On or about the fifth day of October, 1892, he deliberately committed suicide, intending to kill himself, at a time when he was of sound mind,

and in the full possession of his mental faculties. This suicide was not the result of mental unsoundness and was not occasioned by mental unsoundness. It was the deliberate act of a man mentally and morally able to understand all the consequences of his act.

Both defenses, as well as that growing out of the execution of the application, were opened by counsel. It is somewhat anomalous that the speech of counsel is returned as part of the record, though it forms no part thereof, whilst a very important piece of testimony, *i. e.*, the deposition of Mrs. Barcroft, is not.* The appellee has been compelled to print this as an appendix to its argument.

During the whole trial both defenses were sought to be established by evidence.

After all the testimony had been presented, and after points had been submitted by the defendant, including one which very clearly raised the defense of fraud in the inception of the insurance, in these words (Record, 150) :—

If you find that Runk obtained the policies of insurance sued upon at a time when he was insolvent and an embezzler, with the intent thereby to secure, in case of his death, from the plaintiff, the fund with which to pay those to whom he was indebted, and whose property he had embezzled; that he subsequently committed suicide, whilst of sound mind, with the deliberate intent to carry out this scheme, there can be no recovery.

After consideration of these points, the learned trial judge suggested that under the view which he took of the law, it would seem unnecessary to submit more than one question of fact; that being of the opinion that the policies could not be recovered upon, if the jury should find that Runk, when of sound mind, deliberately killed himself, it was not necessary to embarrass them by the other question in the cause, viz., the intent at the inception. As he suggested, if the intent was fraudulent at the inception, but if the self killing by Runk was whilst insane, the defense would not be good; but if the self killing was whilst sane, the original intent was unimportant.

Under this suggestion, and not because of any idea that the evidence did not justify the submission of the fact, counsel for

* See Record, 57.

the defense withdrew the third point and conceded that the judge might put to the jury simply the question upon which he charged. There was no intention to abandon for lack of evidence, and, until the receipt of the appellant's paper book, no idea of such abandonment ever occurred.

The appellant argues three propositions, and we will reply under the heads thus defined by him :—

I. THERE WAS ERROR IN THE ADMISSION OF TESTIMONY TO SUPPORT THE DEFENSE THAT THE POLICIES WERE TAKEN WITH THE INTENT TO COMMIT SUICIDE, AND IN THE REFUSAL OF THE LEARNED JUDGE TO CHARGE, AS REQUESTED, THAT THERE WAS NO EVIDENCE WHICH WOULD WARRANT THE FINDING THAT THEY WERE THUS TAKEN.

II. THE APPELLANT WAS ENTITLED TO RECOVER, ALTHOUGH RUNK DELIBERATELY KILLED HIMSELF WHEN SANE, WITH THE INTENT TO SECURE THE AMOUNT OF THE POLICIES FOR THE BENEFIT OF HIS CREDITORS AND FAMILY.

III. THE LEARNED TRIAL JUDGE ERRED IN CHARGING WHAT CONSTITUTED INSANITY.

I. APPELLANT'S FIRST POINT, VIZ., THAT THERE WAS ERROR IN THE ADMISSION OF TESTIMONY TO SUPPORT THE DEFENSE THAT THE POLICIES WERE TAKEN WITH THE INTENT TO COMMIT SUICIDE, AND IN THE REFUSAL OF THE LEARNED JUDGE TO CHARGE, AS REQUESTED, THAT THERE WAS NO EVIDENCE WHICH WOULD WARRANT THE FINDING THAT THEY WERE THUS TAKEN.

As no exception was taken to the evidence of Hopper, no error can be assigned to its reception. It is not necessary, however, to press this point, in view of what is equally fatal and more substantial.

The testimony of Cullinan, as well as of Hopper, showing the desperate financial situation of Runk at the time he entered into the additional contracts of insurance, was not the first evidence upon that point which was offered. A very large amount of proof had been previously given, without any objection, concerning the financial situation of Runk.

Under our view of the entire competency of the evidence, it is hardly necessary to say that no motion to strike it out was ever made.

Can it be successfully argued, in view of the admission by the plaintiff that he could not succeed if Runk entered into the contract with the intent subsequently to kill himself, that evidence was not competent which showed that at the time the policies were issued, Runk was an embezzler, was insolvent, and was without means to maintain them?

Practically, the appellant puts the error which he thinks was made, upon the refusal of the learned trial judge to charge that the evidence was "not sufficient to warrant the jury in finding that the deceased entered into the said contracts of insurance with the intention of committing suicide."

It is almost impossible to prove a fraudulent intent by direct evidence of declarations as to its existence by the man accused of entertaining it. Those who intend to perpetrate a fraud do not publish the fact. Their intent can only be gathered from circumstances.

Was not a jury at liberty to infer a fraudulent design from the following facts?

Runk, absolutely insolvent, having embezzled nearly \$85,000, obliged to pay annual premiums of about \$12,000 on policies of insurance to the amount of \$315,000, though he possessed no income other than the \$700 per month he could only continue to draw so long as his defalcation should remain unknown, procured, about the 10th of November, 1891, policies to the extent of \$195,000 additional, entailing the payment of an annual additional premium of about \$8000, though obliged to make the first payment, by improperly drawn store orders upon his firm, which remained partly unsettled at the time of his death.

Is it conceivable that he put upon himself this additional burden of \$8000 per annum, though without funds to keep up the insurance already existing, with no intention to bring the duty of payment to a speedy end? Within a year, with part of the premiums still unpaid, after writing letters in which he said he would kill himself in order that he might settle his

indebtedness and embezzlements, with the insurance moneys, he committed suicide. Would not the learned trial judge have done a gross injustice to the defendant, if he had charged that there was no evidence from which the jury might find an intent, at the time of taking out the policies, to defraud? It must be conceded that before the death there was a deliberate intent to render the insurance available by suicide. It was for the jury to say when this intent was first formed. Could they fairly have found, under the financial and other circumstances surrounding Runk at the time he secured the additional contracts, that he expected, for any considerable time, to pay the premiums? He must have known that he would be unable to raise the \$12,000 with which to meet the premiums on existing policies. Is it likely that he would have entailed upon himself a great additional burden, if he expected long to carry it?

It is probable that when these additional policies were taken out Runk determined to embark upon a speculation which, if it succeeded, would enable him to liquidate his embezzlements and indebtedness, but which, if it failed, would entail upon those whom he wanted to protect, no loss greater than what would be covered by the insurance.

During the period following the additional contracts, he over-drew his account with the firm. With these overdrafts it is more than probable he met the speculative margins he was compelled to give. He took care, however, to keep the amount of his overdrafts within a limit which, with the addition of embezzlements and previous indebtedness, would not be in excess of the amount of his insurance.

The appellant says that it was evident, by the testimony of one Pierce, that he had urged the taking of the additional insurance upon Runk, and that he succeeded in placing it by an appeal to the vanity of the latter. In what way the idea of an additional insurance first originated, we know not, but we do not credit the suggestion that, under the shadow of the penitentiary, Runk's vanity was an active factor. It may be that a suggestion by Pierce started the plan; but Runk knew, what Pierce did not, that he was unable to pay the premiums, and that the additional insurance would be impossible to be

maintained saving during a very short term of life. The testimony of Pierce is utterly unreliable, as will appear by an examination of what he said with reference to an inability to induce Runk for some time to take the amount subsequently issued, although it appeared, by the signed application, that Runk, at that very time, had designated the method in which the total amount should be subdivided, and the amount of insurance to be issued in the name of his wife.

An amusing paragraph of the appellant's argument reads thus (page 10):—

It is true that there was evidence of irregular conduct upon Runk's part, as treasurer of the City Mission, which ran back for a number of years prior to his death, but there was no evidence to justify the conclusion that in November, 1891, his embarrassments had in any way rendered him desperate, or even were calculated to cause despair; on the contrary, in November, 1891, Mr. Runk's interest in Darlington, Runk & Co. was much more than sufficient to pay his debt to the City Mission, and his only other debt—that to his aunt, Mrs. Barcroft—was then fully secured by life policies taken out many years before.

The security of a life policy is somewhat problematical. In case of a speedy death alone could it be good. In case of the continued existence of Runk, unable to keep up the premiums, it amounted to nothing. Without means sufficient to keep up the existing premiums, it is not likely, unless he contemplated fraud, that Runk would have entailed upon himself the necessity of paying a largely increased amount. In November, 1891, Runk owed his aunt about \$135,000; had embezzled about \$80,000 of the funds of the City Mission; and had fraudulently withdrawn some money from the firm. At that time he was desperately insolvent.

Nothing but what Runk long knew was inevitable occurred between him and Darlington. For years he must have known that he stood upon the brink of disclosure. He doubtless contemplated, for at least a year, the possibility of that happening which he meant to meet by muleting the insurance companies.

The appellant lost nothing by the course taken under the suggestion of the learned trial judge. The issue of fraud at the inception of the policy was quite as likely to be decided against him by the jury as was that of Runk's soundness of

mind at the time of his suicide. Had the testimony been erroneously admitted, the course taken in the charge, which put to the jury only the question of soundness of mind, eradicated all the evil. We rest, however, upon our assertion that the testimony was properly admitted, in proof of an issue which, if established, was a vital one, and that it was not within the power of the learned trial judge to say that there was no testimony sufficient to warrant a finding of fraud in taking out the additional insurance.

In *Smith vs. N. B. Society*, 123 N. Y., 88, it was said:—

The declarations must be made at the time of the act done which they are supposed to characterize. They must be calculated to unfold the nature and quality of the facts which they are intended to explain, and they must so harmonize with those facts as to form one transaction. That transaction, the thing done, the fact put in issue, was the fraud which evidently was not a simple, but a compound and continuous fact, proceeding to its result by consecutive steps and separate acts having necessarily an origin, a progress and an ultimate result, involving not only the intent of the assured, but also his sanity, without which the responsible intent could not exist. This fraud, therefore, could be studied and proved all along the line, and in all its stages, from origin to culmination, formed part of the issue to be investigated. If in such a case declarations are excluded which are merely narrative of a past transaction, the residue, so far as pertinent to the issue, will generally and with few exceptions be admissible in evidence.

It is thus not difficult to decide that the proof of applications by Tyler to thirty-six different insurance companies, by which he secured \$282,000 of insurance upon his life, and his letters and telegrams to relatives and friends written and sent as steps or agencies in the consummation of his purpose, and indicating a sane and deliberate intent to consummate the fraud, which for more than a year had been in preparation, by a final act of suicide, were all admissible. But some of the evidence was more remote and approached so near to the outside boundaries of the *res gestae* as to require a specific and particular examination. * * *

The declaration accompanied and characterized an act which was itself admissible in evidence, for that act indicated the then desperate character of Tyler's financial situation, and the declaration explained the operation and effect of the fact upon his mind, its force and strength as a motive to the fraud, and the presence of a thought or contemplation of suicide in a contingency which did in fact occur. The evidence serves to indicate the origin and motive of the alleged suicidal intent which grew to be the effective agency of the fraud. * * * They were contemporaneous with the fraud in its formative stages; they accompanied Tyler's efforts to raise money, which failed, and to procure an insurance

upon his life which he knew he could not continuously maintain. They show the motive of the fraud and mark its progress, and harmonize so completely with all which afterward occurred as to constitute, with that, elements of the single transaction, the fraudulent conduct which raised the issue presented by the defense. And so I think the proof came fairly within the rule relating to the *res gestae*, and did not transcend its limits.

Some of this evidence was resisted upon the ground that death by suicide was no defense under the terms of the policy. That is true; but the defense was fraud, and suicide the ultimate agency by which the fraud was accomplished. It was necessary, therefore, to prove it, and in such manner as to indicate that it was not an insane or sudden impulse, but the culmination and effective working out of a deliberately conceived purpose of fraud.

II. APPELLANT'S SECOND POINT, VIZ., THAT THE APPELLANT WAS ENTITLED TO RECOVER ALTHOUGH RUNK DELIBERATELY KILLED HIMSELF WHEN SANE, WITH THE INTENT TO SECURE THE AMOUNT OF THE POLICIES FOR THE BENEFIT OF HIS CREDITORS AND FAMILY.

We maintain the counter proposition, viz., that the personal representatives of a suicide cannot recover upon policies in his name, at his death, if the insured deliberately killed himself, when of sound mind, for the purpose of making the insurance money payable. Under these circumstances the insurance money is not recoverable because:—

1. Death for such cause is not within the meaning of the policy.

2. A contract providing for such a recovery would be against the policy of the law.

3. Suicide, under such circumstances, is a fraud upon the insurer.

1. Death by the deliberate act of the insured, whilst sane, is not within the meaning of the policy.

It has been sometimes said that life insurance is a bet, in which, in consideration of an uncertain sum to be paid to it, the insurer agrees to pay a certain sum upon the death of the

insured, to his personal representatives or nominees. If the insured lives long the insurer will win. If he lives but a short time, the insurer will lose. The latter, apprised by the tables of mortality, is able to form a fair judgment as to the average duration of life, and as to what it will be likely to receive in the way of premiums. Upon this information it bases its chances of success. The life of the insured may not reach the average. Accident and disease may prevent. All this is within the assumed risk, because, though one man does not live as long as is expected, another lives longer. No insurer would be willing to take the chance of the longevity of the insured, with the understanding that it would lose though the latter should take his own life.

The contract of insurance is based upon the idea that a man, knowing the uncertainty of life, desires to secure a provision payable upon the occurrence of this uncertain event. This idea includes no thought of a provision in case of a deliberate, intelligent ending, by the insured, of his own life. It is not based upon what the party to be benefited can make certain at his will.

The reasons which may move a sane man to kill himself are unknown. It is impossible to formulate any tables which will cover the risk that he will do so. There may be a certain percentage of mental diseases which, in a certain percentage of cases, may end in suicide; or there may be a certain percentage of deaths resulting from diseases generally. There can be no estimate of the chance that a man will benefit those near to him by taking his own life.

Whilst the contract is to pay a certain sum in case of death, it is implied that the death shall be one not brought about by the insured. It is impossible to believe that a contract of insurance would result in case of a request by a would-be insurer for the issuance of a policy to cover his suicide whilst sane.

We will not be helped by a reference to the fact that in insurance policies, where there is an exception in case of self destruction, it is usual to add the words "sane or insane." The desire of the insurer is to exempt himself from responsibility

in case of a death "sane." He knows, however, that the probability will be that such exemption will avail him nothing, thus expressed, through the unwillingness of the jury to find insanity. To reasonably protect himself against liability in case of a suicide by an insane man, he must add a provision covering insanity.

In Mr. Biddle's note 5 to his Work on Insurance, section 4, he speaks of the contract of insurance as one in which the insurer "engages that the person shall not die within the time "limited in the policy, or, if he do, that he will pay a sum of "money to him in whose favor the policy was granted." The quotation is taken from Baron Parke.

Would it not be anomalous to hold that the engagement to pay a person a sum of money if he should die, is meant to be kept in case such person shall bring about his own death? Mr. Biddle further quotes from Parke to the effect that the contract of insurance is for the payment of a certain annuity, "the "amount of the annuity being calculated in the first instance "according to the probable duration of the life." Can any calculation be made upon the probable duration of the life of a man who is to be paid the contract money as soon as he dies?

2. A contract providing a recovery in case of suicide by the insured, albeit sane, would be against the policy of the law.

No contract ought to be sustained providing for the payment of money in case of a commission of a crime, or of deliberately taking life. Suicide is a crime.

It would not be contended, if the policy were to provide that in case of the insured's deliberate self killing, when sane, the insurer would pay a certain sum to his personal representatives, that there could be a recovery.

The appellant argues (page 26):—

If public policy does not forbid the payment of the policy when, by the terms of the policy, payment is made directly by the insurance company to the creditor or relative, public policy cannot forbid when the payment is made in effect for the benefit of creditors and relatives, to be distributed among them by an executor or administrator.

The public policy which is involved is, that no covenantee may provide by any contract, for a profit to himself by a criminal, or illegal, act by him done. In case of an assignment, and of a holding of a policy for value, by some third person, the party who does the wrong is not the one benefited. There is nothing illegal in a creditor taking out a policy either directly, or by way of assignment, insuring himself against the consequences of the death of a third person, however occasioned, whether by his own act or otherwise. The decided cases have, in some instances, saved the rights of innocent third persons, but especially those of holders for value. The reason for sustaining a policy, in such a case, does not exist where the policy is held by the insured himself.

It is argued by the appellant that the insured receives nothing because the contract does not mature until after his death. It might as well be said that a loan returnable to the lender, with interest, upon his decease, cannot benefit him. The distinction between a contract performable in favor of a third person, and one performable in favor of the person himself, is a very obvious one.

Men spend their lives in the accumulation of money, with a knowledge that the time will come when they must die, and when others—their relatives and family—alone can profit. One of the strongest motives for the accumulation of money is a benefit which can only be realized by others. Though the fund be not payable until decease, it is one belonging, and subject, to the testamentary power of the insured.

The man who, being insured against fire, would destroy himself and his property, by fire, at the same time, would lay no foundation for a recovery of the fire insurance money, because his estate alone could reap the result.

The appellant says (page 29):—

While a policy drawn in express terms to insure only against the case of a suicide might be objectionable to public policy, the cases cited show that where the contract of insurance is entered into in good faith to cover the contingencies of life and death, the fact that he whose life is insured dies by his own hand does not, upon any ground of public policy, stand in the way of the payment of the policy.

What distinction exists between a policy drawn in express terms to insure only in case of a suicide, and one which expressly insures against death from other causes, and impliedly against death from suicide? So far as the contract covers the illegal provision, it must fall. Contracts implied, equally with those expressed, to do a thing contrary to public policy, are illegal. The suggestion of the appellant is thus met by the Lord Chancellor in the Fauntleroy case, 2 Dow & Clark, 20:—

Suppose that in the policy this risk had been insured in terms—that in the event of the party effecting the insurance being executed for a capital felony the money should become payable—is it possible that a claim in right of a party effecting such an insurance could be maintained, or that the insurance should not be held void as affording encouragement to crime, and being contrary to public policy? If such a policy could not be sustained where a risk of that kind was mentioned in direct terms and language, how can you give effect to a policy if it in reality involves that condition?

On this short and plain ground we are of opinion that the claim cannot be sustained, and that the judgment of the court below must be reversed.

It may be argued that a person will not be likely to kill himself for the purpose of securing a distribution to creditors, and to his family, of insurance money, and that, therefore, the payment of a designated sum, in case of such killing, will be harmless. In the present case, however, we find that a man of sound mind did kill himself for the very purpose of securing to his creditors, and to his family, the insurance moneys now sought to be recovered. Runk's letters show that the purpose of his suicide was to bring about a recovery of the insurance moneys. Can we say, then, that it is not contrary to public policy to make a contract which, expressly or impliedly, may condone an act criminal, and contrary to public morals and policy?

In the Fauntleroy case, from which we have just quoted, it was held that a policy could not be recovered under the following circumstances:—

Fauntleroy effected the policy in January, 1815, and paid the premiums on it up to 1824. On the 29th October, 1824, a commission of bankruptcy was issued against Fauntleroy, who was duly declared bankrupt, and his estate and effects vested in the respondents, as his assignees under the commission. On the 28th October, 1824, Fauntleroy was indicted for

felony, and on the 30th of that month he was tried and convicted, and received sentence of death, and was afterwards executed ; and the question is whether, under these circumstances, the assignees can recover from the insurance society the amount of the sum insured on Fauntleroy's ~~life~~ ; that is, whether—the party effecting the insurance having committed felony, and having been tried, convicted and executed for felony—the parties representing him, and claiming under him and in his right, can maintain the suit. I listened with the utmost attention to the arguments at the bar, as did the noble lord (Radnor) who is now present, and was present at the hearing of the cause, and we have come to the conclusion that the assignees are not entitled to maintain the suit.

If it be said that a contract on the part of the insurer to pay a sum of money in case of a deliberate, intelligent killing, would only be illegal because it would disclose a mutual intent on the part of the insurer as well as of the insured, may we not reply that if there be no *mutual* intent, there can be no duty to pay on the part of the insurer ?

3. A suicide by the insured, whilst sane, with the intent to compel payment of insurance money to his estate, is a fraud upon the insurer.

Is it consistent with common sense, to hold, where the insured enters into a contract with the insurer, requiring the latter to pay a certain sum upon his decease, that he can bring about the duty of payment by any act of his own, deliberately and intelligently done, for the benefit of his estate ?

The learned judge put, as analogous, the case of destruction, by one insured against fire, of his own premises ; and that of murder of the insured, by the assignee of a policy. Are they not analogous ? The appellant says not ; but has he sustained his assertion by argument ? The fire insurance policy stipulates that in case of a destruction by fire, a certain sum shall be paid. It expresses no condition that the destruction shall not be occasioned by the insured. The inability to recover results only from what is implied, viz., that the insured will not commit a fraud upon the insurer. The contract of life insurance, requiring the payment of a designated sum upon the contingency of death, contemplates a death uncertain as to

time, not one which can be made certain by the act of the person to be benefited. The condition of non-destruction by the insured is implied, just as much as in the case of fire insurance. There is no implied condition that there shall be no payment if suicide be occasioned by insanity, because insanity is a disease, and against the chance of disease the policy is issued.

Why may not the assignee of the policy who murders the insured recover? Not by way of punishment of his crime, because the law fixes a punishment which does not entail a forfeiture of property; but only because the receipt of payment results from a fraud.

The appellant concedes that if the insured takes out a policy with the intent to commit suicide, and subsequently does deliberately commit suicide whilst sane, there can be no recovery. He makes the admission because the decisions to that effect are incontrovertible. If, however, it be lawful to make a contract looking to the payment of the personal representatives of the insured in case of deliberate, intelligent, suicide, why is it a fraud to make it when the insured entertains the intent to kill himself? The insurer, if a man has a right to stipulate for payment to his estate upon a certain condition, cannot justly complain that he intends the condition shall occur. If it be a fraud upon the insurer to bring about the happening of the condition, it is also a fraud to enter into a contract with the intent to bring it about; but if, however, the insured does not impliedly agree that he will not deliberately, intelligently, kill himself, he can hardly be held to perpetrate a fraud by entering into a contract intending to do what is within his right.

Having thus defined the three reasons which, in our opinion, sustain our proposition that there can be no recovery upon a policy by the personal representatives of one who, being insured, killed himself deliberately, whilst sane, we will make certain general remarks upon the subject.

Though this contract seemed, upon its face, to be a New York contract, being executed and delivered in that State, and being made performable, both as to payment of premiums and

insurance money, in that State, and though there could have been no recovery, unless it had been held to be a Pennsylvania contract, it is now sought, by the appellant, to escape from the law of Pennsylvania upon the subject.

In *Hartman vs. Keystone Insurance Company*, 21 Penna., 466, 479, it was said :—

Besides this, the court was very plainly right in charging that if no such condition had been inserted in the policy, a man who commits suicide is guilty of such a fraud upon the insurers of his life that his representatives cannot recover for that reason alone.

It is true that in *American Life Ins. Co. vs. Isett*, 74 Penna., 176, it was said that this case "does not profess to hold that "self destruction by the insured, in all cases, avoids the policy." Though in the Hartman case, the remark was general, that the man who committed suicide was guilty of a fraud such as prevented a recovery by his personal representatives, it was meant to apply merely to the case of one who could commit a fraud, *i.e.*, one who deliberately and intelligently committed suicide, not one who was forced to the act by overpowering mental disease.

The late Judge Trunkey in the *Bank of Oil City* case, 6 Legal Gazette, 348, said :—

One guilty of suicide who has his life insured, commits a fraud upon the company, and there can be no recovery upon the policy whether there be such a condition expressed therein or not.

Again, he was referring to a case of deliberate, intelligent suicide.

Whilst there is no decided case applying the proposition for which we contend, there are numerous statements of the law by English judges, of the highest character, and there is no statement to the contrary in any decided case, or in any text book writer of any authority. There is a statement which the appellant quotes from a man named Bacon, who speaks of a weight of authority, but utterly fails to cite a single case in support of his proposition.

The English judges have thus spoken.

We have already quoted from the well-known Fauntleroy case.

In *Bolland vs. Disney*, 3 Russell, 351, it is said :—

To avoid the obligation to pay, the act of the party insured, which produces the event, must be done fraudulently for the very purpose of producing the event.

In 30 Law Journal, 511, Vice-Chancellor Wood, referring to the *Fauntleroy* case, said :—

So the argument might be pursued—although I do not know that any case has so decided—to the same extent in the case of a person committing suicide while in a sane state of mind, thus committing the felony and losing his life thereby; but I know of no rule of law that could justify me in extending that to a case of a person committing suicide while in a state of insanity, and therefore committing no legal offense.

In *Moore vs. Woolsey*, 4 Ellis & B., 243, Lord Campbell said :—

If a man insures his life for a year and commits suicide within a year, his executors cannot recover on the policy, as the owner of a ship who insures her for a year cannot recover upon the policy if within the year he causes her to be sunk. A stipulation that, in either case, upon such an event, the policy should give a right of action would be void. But where a man insures his own life we can discover no illegality in a stipulation that if the policy should afterwards be assigned *bona fide* for a valuable consideration, or a lien should afterwards be acquired *bona fide* for a valuable consideration, it might be enforced for the benefit of others, whatever may be the means by which death is occasioned. No authority has been cited in support of the position that such a condition is illegal, and the frequent introduction of it into life policies indicates the general opinion that it is unobjectionable. The supposed inducement to commit suicide under such circumstances cannot vitiate the condition more than the inducement which the lessor may be supposed to have to commit murder should render invalid a beneficial lease granted for lives. When we are called upon to nullify a contract on the ground of public policy we must take care that we do not lay down a rule which may interfere with the innocent and useful transactions of mankind. That the condition under discussion may promote evil by leading to suicide is a very remote and improbable contingency, and it may frequently be very beneficial by rendering a life policy a safe security in the hands of an assignee. On the demurrer to the second replication, therefore, we think there ought to be judgment for the plaintiffs.

In *Jackson vs. Foster*, 5 Jurist, 547, in the Exchequer Chamber, Chief Justice Cockburn said :—

The insurance company may be taken to have granted the insurance upon a calculation of the average duration of human life; and for that

reason to have excluded from the benefit of the policy the case of death by suicide. But for this exclusion a man might insure his life with an intention of putting as end to it by his own hands. But on the other hand, it would be injurious to the interests of insurance companies if policies could be avoided whenever the assured committed suicide, even when the interest in the policy had passed to a third party, inasmuch as one of the chief advantages of a life policy, the power of making use of it as a negotiable instrument, would be destroyed.

These decisions of the English judges are quoted approvingly not only in Pennsylvania, but also in 71 Alabama, 436, where it was said:—

The certificate is silent as to the consequence, if the member whose life was assured should die by his own hands; and the by-laws of the association, or order, when the certificate was issued, contained no provision declaring in that event an avoidance or forfeiture of the certificate. We are not aware that it has been expressly decided that voluntary self destruction by one whose life was insured and of whose sanity there was no question, would avoid the contract of insurance; or rather, would not fall within its risk, though in that event there was not expressed an exception to the liability of the insurer. The authorities generally seem to proceed upon the tacit or expressed concession or admission that such is the law. In *Moore vs. Woolsey*, 4 Ell. & Black, 243, Lord Campbell said: "If a man insures his life for a year, and "commits suicide within the year, his executors cannot recover upon "the policy; as the owner of a ship who insures her for a year cannot "recover upon the policy if within the year he causes her to be sunk; "a stipulation that, in either case, upon such an event, the policy should "give a right of action, would be void." In *Amicable Ins. Society vs. Bolland*, 2 Dow & Clark, 1 (known as Fauntleroy's case), it was held by the House of Lords, that though there was not in the policy an exception of the liability of the insurer in the event the assured came to his death by the hands of public justice, the exception would be implied for the reason that an express contract for liability in that event would contravene good morals and sound policy. The inference or implication of the law was, therefore, that the execution of the assured by the hands of public justice, for the commission of crime, is not within the risk of the policy. A construction, or an implication, which will preserve the legality of the contract is preferred to one which will have the opposite effect. Referring to Fauntleroy's case, it was said by Wood, V. C., in *Horn vs. Anglo-Australian and Universal Fam. Life Ins. Co.*, 7 Jurist, N. S., 673: "The argument might be best, "although I do not know that any case has so decided, to the same extent in the case of a person committing suicide while in a sane state "of mind, thus committing a felony, and losing his life thereby." In *Hartman vs. Keystone Ins. Co.*, 21 Penn. St., 466, Black, C. J., said that

though the policy was silent in reference to self destruction, if the accused committed suicide he was "guilty of such a fraud upon the insurer of his life, that his representatives cannot recover for this reason alone." Hunt, J., however, said of this case, in *Life Ins. Co. vs. Terry*, 15 Wall., 586, that it was in this respect "confessedly unsound." The case in its entirety is not supported by the current of authority. It rules that an exception in the policy, expressed in the words, "should die by his own hand," must be severed and dissociated from other exceptions expressed in words involving the self criminality of the assured ; were to be construed by themselves, and imported "any sort of "suicide," leaving it in doubt whether "suicide" expressed intentional, voluntary or involuntary, accidental self destruction.

A contract of life insurance is similar in form, in the relative rights and duties of the insurer and the assured, and differs in many respects from marine or from fire insurance ; yet, the general principles applicable to marine or fire insurance are applied, so far as consistent with the nature and obligations of the contract, to the contract of life insurance. In all contracts of insurance there is an implied understanding or agreement that the risks insured against are such as the thing insured, whether it is property or health or life, is usually subject to, and the assured cannot voluntarily and intentionally vary them. Upon principles of public policy and morals, the fraud, or the criminal misconduct of the assured is, in contracts of marine or of fire insurance, an implied exception to the liability of the insurer. *Waters vs. Merchants' Louisville Ins. Co.*, 11 Peters, 213 ; *Citizens' Ins. Co. vs. Marsh*, 41 Penn. St., 386 ; *Chandler vs. Worcester Mut. Fire Ins. Co.*, 3 Cushing, 328. Death, the risk of life insurance, the event upon which insurance money is payable, is certain of occurrence ; the uncertainty of the time of its occurrence is the material element and consideration of the contract. It cannot be in the contemplation of the parties that the assured, by his own criminal act, shall deprive the contract of its material element ; shall vary and enlarge the risk and hasten the day of payment of the insurance money.

The doctrine asserted in Fauntleroy's case, that death by the hands of public justice, the punishment for the commission of a crime, avoids a contract of life insurance, though it is not so expressed in the contract, has not, however, so far as we have examined, been questioned, though the case itself may have led to the very general introduction of the inception into policies. The same considerations in reasoning which support the doctrines, seem to lead, of necessity, to the conclusion that voluntary criminal self destruction, *suicide*, as defined at common law, should be implied as an exception to the liability of the insurer, or, rather, as not within the risks contemplated by the parties, reluctant as the courts may be to introduce by construction or implication exceptions into such contracts, which usually contain special exceptions. An express contract to pay insurance money to the insured, in the event he

committed suicide, an increased premium being paid because of the risk, there could be but little, if any, hesitancy in repudiating as offensive to law and good morals. The fair and just interpretation of a contract of life insurance made with the assured is, that the risk is of death proceeding from other causes than the voluntary act of the assured, producing, or intended to produce it; and especially of a contract made by an association or organization, with one of its members, the objects and purposes of which is that the members will contribute to and bear each other's losses, or the losses of those dependent upon them. The extinction of life by disease, or by accident, not suicide, voluntary and intentional by the assured, while in his senses, is the risk intended; and it is not intended that, without the hazard of loss, the assured may safely commit crime. Bliss on Life Ins. Section 242-3.

In *Armstrong vs. Mutual Life Ins. Co.*, 117 U. S., 591, Mr. Justice Field said:—

It would be a reproach to the jurisprudence of the country if one could recover insurance money payable on the death of a party whose life he had feloniously taken. As well might he recover insurance money upon a building that he had wilfully fired.

May we not say that it would be equally a reproach to the jurisprudence, if a contract could be made, and could be recovered upon, providing that in case of deliberate, intelligent self killing, the estate of the insured should derive any benefit therefrom?

In the last book upon Insurance, Mr. Biddle, section 830, says:—

It may be that a contract of insurance would be avoided where the insured commits intentional self destruction or suicide, and while it will be difficult to find any case deciding that it does, there are undoubtedly dicta to that effect.

The appellant urges that there is a dictum of Mr. Justice Hunt which should govern this case, to be found in *Life Ins. Co. vs. Terry*, 15 Wallace, 580. It is in these words:—

In *Hartman vs. Keystone Insurance Company* the doctrine of *Borradaile vs. Hunter* was adopted, with the confessedly unsound addition that suicide would avoid a policy, although there were no condition to that effect in the policy.

In that case the Supreme Court of the United States found it necessary to decide a point concerning which there had been a great conflict of authority, the English cases, beginning with

Borradaile vs. Hunter, having decided in a way which it found itself unable to follow. In England it had been held that under a policy providing that there could be no recovery in case of self destruction, there was no liability in case of destruction by a man who deliberately killed himself with the intent to kill, even though he might not be of sound mind. It became necessary to review the authorities, and, in the course of a long list of citations, the case of *Hartman vs. Insurance Company* was mentioned. The question to be decided by the judge who wrote the opinion was whether, if the policy provided against liability in case of suicide, a killing by a man of unsound mind was contemplated. It was in this connection he said of the Hartman case that it adopted the Borradaile case, which had held the insurance company exempt in case of a clause in the policy whether the man was sound or unsound, with the confessedly "unsound addition" that the suicide would avoid the policy even though there was no condition to that effect. He was not considering the case of suicide by a man of sound, but that of suicide by a man of unsound mind, and in connection only with this, did he deal with the Hartman case. He thought it unsound if it held that in such a case there could be a recovery, though there was no clause saving suicide in the policy itself. The question of liability to the personal representatives of a man of sound mind, in case of suicide, was not considered by the court in that case, or in any way contemplated by the learned judge who delivered the opinion.

We have said all that is necessary to be said concerning the Bacon citation—a book with which we are entirely unfamiliar. The author deserves no credit saving to the extent that he can support his proposition by decided cases. He cites none.

The references by the appellant to authorities in which it has been held that there may be a recovery upon a policy in case of a deliberate killing by a man of sound mind, are to those in which the recovery was allowed in favor of assignees. In no case was such a recovery permitted by personal representatives. The decisions were expressly rested by the learned judges who decided them, upon the fact that the recovery was for the benefit of third persons.

In *Fitch vs. Life Ins. Co.*, 59 N. Y., 573, it was expressly said :—

It was not taken out for the benefit of Fitch (the insured), but of his wife and children.

The suit was not by the personal representatives. There is a difference in the contemplation of law between the case of a recovery upon a policy controlled and owned by a man at the time of his death, and one over which he had no control. With motives which lead to benefit to others, the courts may not deal. With those which lead directly to the benefit of the party, or of his estate, they may, and do.

The citations of authorities by the appellant, taken without their context, are misleading. An examination of them shows them to be utterly valueless in support of anything urged by him.

III. APPELLANT'S THIRD POINT, VIZ., THAT THE LEARNED TRIAL JUDGE ERRED IN CHARGING WHAT CONSTITUTES INSANITY.

The bold assertion is made by the appellant that the charge of the learned judge, in which he defines mental unsoundness, was not in accordance with the decisions by the Supreme Court of the United States. He quotes the charge and at great length quotes the decisions, doing nothing more saving assert that there is a difference. We have read not only the citations, but the authorities themselves in the original, and we fail to see the difference claimed to exist.

We read in the decisions nothing of that which is so much dwelt upon by the appellant, *i. e.*, "the impulse of self destruction" * * * "The impairment of the moral vision." Something is said about an irresponsible *insane* impulse, but this renders it still necessary to define insanity. We concede that if the impulse is an insane one there can be a recovery. We deny, however, that an impulse which is not insane, or which is irresistible through viciousness, is sufficient to justify a recovery.

The appellant says (page 46) :—

In all these cases the impairment of the moral vision, so as to leave the deceased in a condition that he was unable to resist the impulse of

self destruction, is accepted as an insanity or mental unsoundness sufficient to relieve him from the charge of felonious suicide. The charge of Judge Butler enforces a much stricter rule, and mental perception of consequences and mental consciousness of wrongfulness, irrespective of moral power to resist, according to the charge, was sufficient to place the deceased in the category of a felonious suicide.

A search through all the cases decided by the Supreme Court of the United States will fail to disclose any announcement that an "impairment of the moral vision," so as to leave the deceased in a condition unable to resist the impulse of self destruction, is insanity. Such an examination will fail to disclose any other standard of insanity than an impairment of mental perceptions and mental consciousness.

Other courts had held a man to be mentally sound, within the meaning of a life insurance policy, if he had deliberately killed himself, or had done that which he knew would kill him, with the intent to bring about that result. It was held by our highest tribunal that a man was insane, and was mentally unsound, if he knew what he was doing, and meant to do it, but was mentally unable to discriminate between right and wrong in his perception of the consequences of the act.

We concede that a man is not of sound mind who is not "able to understand the moral character and consequences of "his act." So the learned judge charged.

Let us consider the cases so confidently appealed to by the appellant. Mr. Justice Miller, in the Terry case (15 Wallace, 580), said :—

The act of self destruction must have been the consequence of insanity, and the mind of the decedent must have been so far deranged as to have made him incapable of using a rational judgment in regard to the act which he was committing. * * * If he was impelled to the act by an insane impulse which the reason that was left him did not enable him to resist, or if his reasoning powers were so far overthrown by his mental condition that he could not exercise his reasoning faculties on the act he was about to do, the company is liable.

In affirming this charge, Mr. Justice Hunt said :—

The request for instructions made by the counsel of the insurance company proceeds upon the theory that if the deceased had sufficient mental capacity to understand the nature and consequences of his act, that is, that he was about to take poison, and that his death would be

the result, he was responsible for his conduct, and the defendant is not liable; and the fact that his sense of moral responsibility was impaired by insanity does not affect the case. The charge proceeds upon the theory that a higher degree of mental and moral power must exist; that although the deceased had the capacity to know that he was about to take poison, and that his death would be the result, yet, if his reasoning powers were so far gone that he could not exercise them on the act he was about to commit, its nature and effect, or if he was impelled by an insane impulse which his impaired capacity did not enable him to resist, he was not responsible for his conduct, and the defendant is liable. * * * The propositions embodied in the charge before us are in some respects different from each other, but in principle they are identical. They rest upon the same basis—the moral and intellectual incapacity of the deceased. In each case the physical act of self destruction was that of George Terry. In neither was it truly his act. In the one supposition he did it when his reasoning powers were overthrown and he had not power or capacity to exercise them upon the act he was about to do. It was in effect as if his intellect and reason were blotted out or had never existed. In the other, if he understood and appreciated the effect of his act, an uncontrollable impulse caused by insanity compelled its commission. He had not the power to refrain from its commission, or to resist the impulse. Each of the principles put forth by the judge rests upon the same basis—that the act was not the voluntary, intelligent act of the deceased.

He further said :—

When we speak of the "mental" condition of a person we refer to his senses, his perceptions, his consciousness, his ideas. If his mental condition is perfect his will, his memory, his understanding are perfect, and connecting with a healthy bodily organization. If these do not concur his mental condition is diseased or defective.

He concluded :—

If the death is caused by the voluntary act of the assured, he knowing and intending that his death shall be the result of his act, but when his reasoning faculties are so far impaired that he is not able to understand the moral character, the general nature, consequences, and effect of the act he is about to commit, or when he is impelled thereto by an insane impulse which he has not the power to resist, such death is not within the contemplation of the parties to the contract, and the insurer is liable.

In the Rodel case, 95 U. S., 232, Mr. Justice Bradley said :—

The judge properly refused the request to charge that the plaintiff could not recover if the insured knew that the act which he committed would result in death, and deliberately did it for that purpose. Such

knowledge and deliberation are entirely consistent with his being, in the language of the charge, "impelled by an insane impulse which the " reason that was left him did not enable him to resist," and are, therefore, not conclusive as to his responsibility or power to control his actions.

In the Broughton case, 109 U. S., 121, Mr. Justice Gray said :—

The remaining and the most important question in the case is whether a self killing by an insane person, having sufficient mental capacity to understand the deadly nature and consequences of his act, but not its moral aspect and character, is a death by suicide within the meaning of the policy. * * * If he was impelled to the act by insanity which impaired his sense of moral responsibility, the company was liable.

In the Akens case, 150 U. S., 468, counsel presented the oft-discredited point, running thus :—

If the jury believe from the evidence that the self destruction of the said Smith was intended by him, he having sufficient capacity at the time to understand the nature of the act which he was about to commit, and the consequences which would result from it, then and in that case it is wholly immaterial in the present case that he was impelled thereto by insanity which impaired his sense of moral responsibility and rendered him to a certain extent irresponsible for his action.

The learned trial judge there held :—

If he was impelled to the act by an insane impulse, which the reason that was left him did not enable him to resist, or if his reasoning powers were so far overthrown by his mental condition that he could not exercise his reasoning faculties on the act he was about to commit, the defendant is liable.

Mr. Justice Gray again repeated :—

If one whose life is insured intentionally kills himself when his reasoning faculties are so far impaired by insanity that he is unable to understand the moral character of his act, even if he does understand its physical nature, consequence and effect, it is not a "suicide."

It will be observed that in all these cases it is required, to constitute mental unsoundness, that the *reasoning* faculties must be impaired by insanity so that the suicide cannot understand the moral character of his act; that he must be urged by an *insane* impulse; that he must be impelled to the act by *insanity*, impairing his moral sensibility; and that his *reason-*

ing faculties must be so impaired that he is not able to understand the moral character, &c., of his acts.

Let us see what the learned trial judge said (Record, 146):—

If one whose life is insured intentionally kills himself when his reasoning faculties are so far impaired by insanity that he is unable to understand the moral character of his act, even if he does understand its physical nature, consequence and effect, such self destruction will not of itself prevent recovery upon the policies. * * * We must understand what is meant and intended by the term "moral character of his act." It is a term which has been used by the courts and is correctly inserted in the point; but it is a term which might be misunderstood. We are not to enter the domain of metaphysics in determining what constitutes insanity, so far as the subject is involved in this case. If Mr. Runk understood what he was doing, and the consequences of his act or acts to himself as well as to others; in other words, if he understood, as a man of sound mind would, the consequences to follow from his contemplated suicide, to himself, his character, his family and others, and was able to comprehend the wrongfulness of what he was about to do, as a sane man would, then he is to be regarded by you as sane. Otherwise he is not.

He added:—

I therefore charge you that if he was in a sane condition of mind at the time, as I have described, able to understand the moral character and consequences of his act, his suicide is a defense to this suit.

We deem it necessary to do no more than to put this charge in juxtaposition with the law as laid down by the Supreme Court.

CHARLES P. SHERMAN,
JOHN G. JOHNSON,

For Appellee.

APPENDIX.

A. Howard Ritter, Executor of the estate of William M. Runk, deceased,

vs.

The Mutual Life Insurance Company of New York.

A. Howard Ritter, Executor of the estate of William M. Runk, deceased,

vs.

The Home Life Insurance Company.

Deposition taken without rule, by agreement, upon mutual understanding as to time, of Mrs. Mary A. Barcroft. Deposition taken because of a physician's certificate that Mrs. Barcroft would not be able to be in attendance at court.

Present—Mr. George Tucker Bispham, for plaintiff; John G. Johnson, Esq., for Mutual Life Insurance Company; and John Scott, Jr., and John G. Johnson, Esqs., for Home Life Insurance Company.

MRS. MARY A. BARCROFT, being duly sworn, deposed as follows:—

By MR. JOHNSON:

Q. At the time of William M. Runk's death, was he indebted to you, and if so, in what amount?

A. Yes, sir; I held his note for \$127,550.

Q. Do you remember the date of that note?

A. November 10th, 1890.

Q. That was his total indebtedness to you, was it, at the time of his death?

A. Yes, sir.

Q. Had he had any charge or custody of your financial matters in any way?

A. No, sir.

Q. What collateral did you have for that note?

A. Life insurance policies.

Q. Can you tell in what companies?

A. Policy No. 36,437 in Penn Mutual Life Ins. for \$5,000
 " " 36,438 " " " " " 5,000
 " " 42,802 " " " " " 20,000
 " " 110,445 " North Western Mut. " 10,000
 " " 12,796 " State Mutual Life Assur. " 10,000
 " " 172,721 " Northwestern Mut. Ins. " 35,000
 " " 228,556 " New York Life Ins. Co. " 25,000
 " " 228,557 " " " " " 25,000

Q. And these policies you retained, without any change, until his death?

A. Yes, sir.

Q. And upon his death, you collected some of them?

A. Yes, sir; all of them.

Q. Do you remember the total collected?

A. There was some interest due, and there were some bonds that had to be redeemed, and I just made use of all of them to pay these off, and, I think—I am quite sure, that it took the whole amount.

Q. How much did you realize from the policies?

A. \$135,000; it may have been a little over.

Q. Then there was enough realized from the policies to pay the note?

A. Yes, sir.

Q. That note was one that he gave for a loan that was regularly made and continued from time to time?

A. Yes, sir.

Q. Did you renew the note, or was it the same note?

A. It was the same note.

Q. Didn't you, from time to time, advance him some other moneys?

A. Never without his asking for it.

Q. Tell us what those amounts were.

A. I couldn't tell you. My books will show every dollar, but I cannot tell now.

Q. Have you them here?

A. Mr. Tener has them at the Mortgage Trust Company. They will give you every dollar, dates and everything. They were kept very correctly.

Q. Have you any idea of the aggregate, at the time of his death, of the other advances ?

A. I cannot answer that.

Q. Was it as much as \$100,000 ?

A. I think it might have been.

Q. You spoke, Mrs. Barcroft, of using that \$135,000, or some of it, in taking up some bonds. What bonds were they ?

A. Norfolk and Western Railroad Company, Baltimore and Ohio Railroad Company—there were three sets of bonds. I forgot the other.

Q. With whom were those bonds ?

A. He took them from me, and I don't know where they were.

Q. How did he take them ?

A. He asked me for the loan of them.

Q. Do you remember when ?

A. I think the Norfolk and Western was just about a year before his death, and the others were some time previous to that—a year or two. At the time of this note being drawn up there was, I think, a list that he had as to the Norfolk and Western bonds. The books will tell.

Q. At the time these advances were made to him did you take any obligation from him ?

A. No, sir.

Q. How was it that you took the obligation for the \$127,550 and did not for these ?

A. I wanted a settlement with him for what he owed me—some arrangement made whereby he would be protected in his business and I would be protected, and I thought it was proper and right to do so. I came to see Mr. Bullitt, and he made all the arrangements. I wanted him to be protected in his business, and I might die, and I wanted my estate protected.

Q. But you have not told us how the indebtedness—how did he become indebted in this way ? Did he, in the first instance, borrow these bonds from you ?

A. Yes, sir.

Q. When he borrowed them from you, what did you take from him to show that he owed them?

A. Nothing. I signed a paper giving him the power to use them. I remember that.

Q. Was that a written paper?

A. It must have been; yes, sir; I never had it.

Q. And were all of these bonds advanced to him on that paper?

A. Not on that one paper, but at different times, and on different papers.

Q. What became of the papers?

A. I cannot tell you. I never had them.

Q. Have you any idea what those bonds were pledged for, that you took up after his death?

A. I cannot tell you that, sir. I think Mr. Tener can tell you.

Q. How did you ascertain where those bonds were?

A. I can't tell you that.

Q. Who did ascertain it?

A. Mr. Tener.

Q. Weren't they in the hands of brokers?

A. I think so, sir.

Q. Had you loaned them to him for the purpose of pledging them with brokers?

A. No, sir.

Q. You were entirely ignorant of that use of them?

A. Yes, sir.

Q. You loaned him money to put in his business?

A. Yes, sir.

Q. And supposed that it was in his business?

A. Yes, sir.

Q. When did you find the contrary?

A. Not until after his death.

Q. Did you know, at any time, that he was speculating in stocks?

A. No, sir.

Q. You saw him pretty frequently up to the time of his death?

A. Almost daily. I could not tell how often, but two or three times a week.

Q. And that fact he never disclosed to you up to the last moment?

A. No, sir.

Q. Nor gave you any idea, of any sort or kind, that he had been doing it?

A. No, sir; and I had not the slightest suspicion of it.

Q. Do you remember many years ago he became involved in some difficulty owing to speculation in Jersey Central, where you helped him out?

A. I know nothing about it.

(Mr. Bispham objects to this and to the manner of question generally, with a reservation of the right to object to the disability of the witness, saving that such objection shall not be to the mere shape of the question.)

Q. Do you remember paying any money on William M. Runk's account after his death, to the Episcopal City Mission?

A. Yes, sir.

Q. How much was that?

A. \$40,000.

Q. That was the amount which, as treasurer, he had embezzled, was it not?

A. I don't know how he got it.

Q. He had been the treasurer?

A. Yes, sir; and the report was that he had used that money.

Q. I take it for granted your intervention was simply to save his credit?

A. Yes, sir; himself and his family.

Q. Were there any other settlements which you made after his death to order to preserve his credit?

A. No, sir. Mr. Darlington and I agreed to indemnify the executor against loss if he would pay the small bills and the estate should prove insolvent.

Q. It was found, in this Episcopal City Mission, that he, as treasurer, had appropriated a certain amount of cash, and used certain of their bonds, and you then agreed that you would

pay them the amount that was due, and should take an assignment of their claim against the estate?

A. Yes, sir; that is correct.

Q. You presented at the audit a claim of \$86,736 against the estate in the Orphans' Court. Do you remember that?

A. I saw that in the paper, but I don't know how it came about. It was so printed in the paper. I had not done anything like that. I went to Mr. Tener and he explained about it. I had only \$40,000; not the whole amount.

Q. Do you remember what his explanation was, now?

A. They made it so as to cover up the City Mission. It was fixed with the court, or something of that kind, that it should not be that he owed the City Mission, that I had assumed it.

Examination of MR. TENER, with the books:—

Q. Mr. Tener, tell us, please, how much Mrs. Barcroft got from the policies of insurance; how much she loaned Mr. Runk; the amount of bonds of hers he had pledged with the brokers and the dates at which she had loaned him these bonds.

(Mrs. Barcroft's books, as kept by Mr. Tener, are now produced at the suggestion of counsel, and she is allowed to refresh her memory and inform herself as to details therefrom, with his assistance.)

A. The books show that the amount received from insurance was exactly \$135,000. October 11th, 1892, New York Life Insurance Company, \$50,000; October 12th, 1892, from the Penn Mutual Life Insurance Company, \$29,290.71. In explanation of the odd amount, there was some reduction, I think, of a premium note against it. November 8th, from the Northwestern Life Insurance Company, \$45,109.80; November 11th, from the State Mutual Life Insurance Company, \$10,000; amounting in round figures to \$135,000.

Q. Now, I wanted to see how much of that money was paid, and when and to whom in taking up her bonds, which had been pledged with brokers.

A. On November 11th, Mrs. Barcroft paid the Beneficial Saving Fund Society \$10,167.50 to redeem \$10,000 bonds of

the Baltimore and Ohio, which I understand she had loaned Mr. Runk.

Q. They were pledged with the Beneficial Saving Fund Society on Mr. Runk's note, of course?

A. Yes, sir; as collateral security.

By MR. BISPHAM:

Q. Do your books show the date when the bonds were pledged?

A. No, sir.

By MR. JOHNSON:

Q. It will show the date of Runk's note?

A. No, sir.

Q. Do the books show what the amount of Runk's note was?

A. No, sir; we just simply relieved the bonds for the amount that they had charged against them. In other words, we paid off the loan. On the same day, November 11th, 1892, paid the Philadelphia Saving Fund Society \$17,353 for the purpose of redeeming \$12,000 bonds of the Norfolk and Western, and \$5000 bonds of the Camden and Atlantic Railroad Company, and \$1000 City of Cincinnati, in all, \$17,353. November 17th, paid to R. E. Tucker & Co., brokers, \$2,057.08 in redemption of \$2000 of bonds of the Camden and Atlantic Railroad Company and \$1000 Lehigh Valley Railroad Company. That seems to be about all.

Q. That would expend only about \$29,410. The balance of the \$135,000 must have been put into something.

A. When Mr. Runk went into business with Mr. Darlington, in 1878, Mrs. Barcroft loaned him \$69,000 in money to make up his \$100,000 share of the capital of that concern, and subsequently from time to time she loaned him from \$28,000 to \$30,000 additional, as he needed money. The \$28,000 to \$30,000 was not loaned at one time. There were loans from time to time upon which payments were made.

Q. Were these loans of \$69,000 and \$28,000 to \$30,000 additional to the note of \$127,550?

A. Which note do you refer to, Mr. Johnson?

Q. The note that Mrs. Barcroft took in 1890.

A. The note for \$127,550 was taken in 1890, in settlement of all the advances up to that time.

Q. But what I wanted to see by the books was whether there was not paid out of this \$135,000 that was got after Runk's death a larger amount than the \$10,000, \$17,000 and odd and \$2,000 and odd in taking up the bonds of Mrs. Barcroft's.

A. Therè was a balance of interest against him in this account of a little over \$4000.

Q. He was that much back in his interest at the time of his death?

A. Yes, sir; that was only six months' interest on the whole indebtedness.

Q. I do not, of course, mean what Mrs. Barcroft took, which of course she had a right to in payment of the debt, but whether she did not use more than these three sums of that \$135,000 in redeeming bonds of hers which Runk had pledged?

A. Not one dollar, and I may add in addition to that that there was a balance of \$350.13 due her after all the insurance was paid.

By MR. BISPHAM:

Q. That represented the total indebtedness of Mr. Runk to Mrs. Barcroft?

A. Yes, sir.

Q. That is, the \$135,000 collected on the insurance policies, plus this balance of \$350, represented the total of Mr. Runk's indebtedness to Mrs. Barcroft at that time?

A. Yes, sir.

By MR. JOHNSON:

Q. Then how was this \$86,736 made up, Mr. Tener?

A. On February 3d, 1893, Mrs. Barcroft issued her check for \$35,000 to be paid to the Protestant Episcopal City Mission, and she took an assignment of the claim of the City Mission against the estate. On March 17th there was a further sum of \$5000 paid in the same way, and again, the same day, \$140.36. On December 27th, 1893, a still further sum of \$859.62 was paid through Mrs. Barcroft's counsel to the City Mission. This makes a total of \$40,999.98.

Q. She spent \$40,000 out of her own account?

A. Yes, sir; they were her own. They had nothing to do with the City Mission.

Q. Her claim of \$86,000 was composed partly of that?

A. The insurance paid for this. That is, her entire claim was made up a little short of \$100,000 in money actually paid, and in money afterwards advanced to redeem the bonds and the interest. This first matter that we were speaking of had no connection with the City Mission.

Q. Didn't he owe the whole of that note, \$127,550, at the time of his death?

A. Yes, sir; the \$30,000 which Mrs. Barcroft loaned were part and parcel of that \$127,000.

Q. These bonds, then, which were taken up at the Philadelphia Saving Fund, and the Beneficial Saving Fund and Tucker & Co.—these bonds thus taken up made up part of the \$127,550?

A. Yes, sir.

Q. Well, then, there was upwards of \$45,000 that was not included?

A. I have no knowledge whatever of the claim that was sent to the executor of the estate. I don't know how that was made up.

Q. Can you tell by the books when these bonds were loaned to Runk?

A. When they were loaned there was no entry made, but Mr. Runk afterwards gave Mrs. Barcroft a due bill, which is in her possession. That is in the Fidelity Company. It was six or seven years ago—six years at least.

Q. Who will know about that?

A. Mr. Ritter is very familiar with all the details of this claim.

Q. Mrs. Barcroft, after hearing what your books contain, and having your memory refreshed as far as these books will refresh it, you cannot give us any further explanation of how the claim of \$86,000 was made up?

A. It was made up by the City Mission, and with life insurances paid in to the executor he was able to pay off that much,

\$40,000 and odd. And then he came short—he expected to settle the whole amount.

By Mr. TENER:

As I understand, the \$40,000 paid by Mrs. Barcroft to the City Mission testified to, was in addition to an amount of some \$45,000 paid by the executor on account of the total claim, and Mrs. Barcroft, in order that there might be no claim against the executor for having thus paid it, assumed the entire amount.

Q. Of course, Mrs. Barcroft, during the lifetime of Mr. Runk you were in total ignorance of that shortage?

A. Entirely so. I knew he was the treasurer, but as for his using any of the money, I didn't know anything about it.

Q. Did you receive a letter shortly before the death of Mr. Runk, or immediately after, written by him?

A. Yes, sir.

Q. Have you that letter?

A. Yes, sir.

Q. Will you let me see it?

(Letter produced and read by Mr. Johnson.

Envelope addressed, "Mrs. M. A. Barcroft.")

"ST. DAVIDS, PA.

"LLANDEILO.

"MY DEAR AUNT MARY:—Forgive me for the disgrace I bring upon you, but it is the only way I can pay my indebtedness to you. A. Howard Ritter will attend to all my affairs with Evelyn. You have always told me my mind was not strong. I have been led astray, have been infatuated with speculation and lost. I worked too hard,—I am wild but cannot recover now.

"Thank you for all you have been to me in every way. Forgive.

"Affectionately,

"Tuesday, Oct. 6, 92."

WM."

Q. That was received by messenger?

A. The letters were laying in the house, and his wife took charge of them. She handed it to me.

Q. Of course you are aware that if the insurance policies are collected that this amount of \$86,736 will all be recoverable by you?

A. Only the \$40,000. The other has been paid out of the estate, if I understand right. He paid out of the estate, out of the insurance he received, all he could, and when he could not pay any more I saw proper to settle the thing up.

No cross examination.

Signature waived.

THE PAPER BOOK OF DEFENDANT IN ERROR
IN THE COURT OF APPEAL
OF THE STATE OF TEXAS TO THE
COURT OF CRIMINAL APPEALS
OF TEXAS

PAPER BOOK OF DEFENDANT IN ERROR

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**CHARLES F. SHERMAN,
EDWARD LYMAN SHORT,
JOHN G. JOHNSON,**

IN THE SUPREME COURT OF THE UNITED STATES.

[No. 16,214.]

A. Howard Ritter, Executor of William M. Runk, deceased, Plaintiff in error,
vs.
Mutual Life Insurance Company of New York, Defendant in error.

October Term, 1897.

No. 142.

ON WRIT OF *Certiorari* TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

I. COUNTER STATEMENT OF FACTS.

In his history of the case, the appellant makes certain statements which do not accord with the facts as understood by the appellee. It is certainly incorrect to say that "the defendant failed to adduce evidence upon which on this issue" (the obtaining of the policies by Runk, with a fraudulent intent to kill himself for the benefit of his creditors and of his family) "the jury could have properly found a verdict in its favor." It is equally incorrect to say that "the defense was then shifted "to the bald proposition of law that the suicide of Mr. Runk, "without any express clause to that effect, avoided the policy "unless the plaintiff proved that Runk was insane," and that

"the court, expressing great doubt as to the correctness of the ruling, sustained this proposition."

It is said, without warrant, that "in the charge of the court "the definition of insanity was drawn so narrowly, the burden "of proving insanity was placed with such emphasis upon the "plaintiff, and the comments of the learned judge upon the "evidence were so adverse, that the jury found a verdict for "the defendant."

It is true that after the court had refused to permit the defendant to put in evidence the application signed by Runk, because of its non-attachment to the policy, as required by the Pennsylvania statute of 1881, it became impossible to defend upon what was therein contained, viz.: "I also warrant and "agree that I will not die by my own act, whether sane or "insane, during the said period of two years." This refusal was made under the following state of facts:—

The appellee was a New York corporation which promised to pay "at its home office in the State of New York" upon the death of Runk, in consideration of a recited annual premium, the first being paid in advance and the succeeding ones to be paid "thereafter to the company at its home office in "the city of New York on the tenth day of November in "every year during the continuance of this contract." The policy was thus attested:—

In Witness Whereof, The said The Mutual Life Insurance Company of New York has caused this policy to be signed by its president and secretary at its office in the city of New York.

The appellee, in New York, accepted the risk, and mailed the policy to its general agent. Though it was argued, on its behalf, that the contract was a New York contract, delivered in New York, and to be performed in New York, the learned trial judge held to the contrary.

Two defenses, however, were left which, from beginning to end, were urged by the appellee with as much force of presentation as was within the ability of its counsel. From the beginning it was claimed there could be no recovery by the executor of the insured upon the policies, if the latter,

whilst of sound mind, deliberately killed himself. The evidence of unsoundness of mind was ridiculously meagre. No jury, not actuated by sympathy, could possibly have found such unsoundness from the testimony. The only witnesses called by the appellant to establish it, were the wife and sister in law, who proved, practically, nothing. In reply to a question from the learned trial judge, the wife thus answered (Record, page 122) :—

Q. It might be interesting to know whether you formed this opinion of his mental condition before his death? A. I noticed many things strange. Q. You have given us your judgment of his mental condition based on what you observed. Did you form the opinion which you have expressed that his mind was unbalanced before his death or afterwards? A. Afterwards. Q. Then the act of committing suicide had something to do with the conclusion you reached? A. It had.

Out of the large number of people, in Runk's store and elsewhere, who had conversed, and had done business, with him, during the last days of his life, no one was found who ventured to express an opinion that he was insane. The testimony offered by the appellant showed little more than a distraction of manner, which, under the circumstances was most natural. It really established sanity.

It is true the appellee did aver that Runk secured the policies with a fraudulent intent at that time entertained of killing himself in order that his creditors, (the most important of whom was closely related to him), and his family, might thereby profit.

Much evidence to this effect was adduced by the appellee. Under point III. we will state, with more detail, the evidence establishing an intent to commit suicide, existing at the date of the policies.

Whilst it is true the learned trial judge did express his regret that more time was not at his command in which to investigate the important point involved than that afforded in the hurry of the trial, it is also true, that he then reached a conviction so decided, that when the cause came before him for argument upon motion for a new trial, he acquiesced in the suggestion of the learned counsel for the appellant that further discussion would be unnecessary, as his convictions were settled.

II. APPELLEE'S ARGUMENT.

The appellant rests his case upon three points. We maintain the counter propositions, which we state as follows:—

I. There can be no recovery by the executor of an insured, if the latter, being of sound mind, deliberately takes his own life.

II. Insanity was correctly defined by the learned trial judge.

III. There was abundant evidence tending to prove that Runk conceived a design of effecting policies for the benefit of his estate, with the intent, thereafter, to take his own life.

I. There can be no recovery by the executor of an insured, if the latter, being of sound mind, deliberately takes his own life.

We rest this proposition upon three points:—

1. *Death, resulting from a deliberate killing of himself by the insured, if sane, is not within the meaning of the policy.*

2. *A contract providing for a recovery in case of such death, would be against the policy of the law.*

3. *The deliberate killing of himself by the insured, if sane, is fraudulent, quâ the insurer.*

1. Death, resulting from a deliberate killing of himself by the insured, if sane, is not within the meaning of the policy.

Life insurance is a risk of the duration of the life of the insured assumed by the insurer, who, in consideration of a sum to be paid to it for an uncertain time, agrees to pay a fixed sum, upon the death of the insured, to his personal representatives or nominees. If the life of the insured proves a long one the insurer wins. If it is not a long one it loses. Apprized by the tables of mortality, the insurer is able to form a fair judgment

as to what it will be likely to receive in the way of premiums. Upon these tables it rests its chances of success. The life of any one person insured, through accident or disease, may not reach the average; but in the case of many persons there will be an average duration of life. No insurer would be willing to take the chance of longevity if it understood that the insured, by taking his own life, could, at any time, turn an uncertainty into a certainty, to its injury and to the benefit of his estate.

The insurance contract is made by two persons, one of whom, the insured, desires to provide against the early occurrence of an uncertain event, the termination of his life, and the other of whom, the insurer, takes the chance of such termination, by charging a sum based upon an average of longevity. Each of the parties thereto takes a chance. If, however, the insured by his own deliberate act, not resulting from mental disease, can, at any moment, end his own life, the insurance may prove to be one, not against the chance that he will not live, but against what he may make a certainty. The insured fears a speedy death. The insurer hopes for a long life. The insurance contract is, therefore, the result of the apprehensions of the insured and of the hope of the insurer. It is not probable that any contract would be made if the insured should say to the insurer, "As I may become tired of life, and "may determine hereafter to kill myself, I wish to insure a "provision for my family." Each party is moved by the idea that profit will result to him or to it, as the life may fall short of, or exceed, an average.

The reasons which may move a sane man to kill himself are unknown. The obligation to pay will result, if deliberate suicide be insured against, whenever the insured determines to die. No tables covering the risk that he may make the insurance money immediately payable can be formulated, because such risk depends, not upon tables of mortality, but upon the voluntary action of one who will thereby profit pecuniarily. Insurance against suicide resulting from insanity rests upon a different basis, because such suicide is the result of mental disease, and the percentage of deaths likely thus to occur can

be estimated as well as can the deaths likely to result from physical disease.

Can we believe that any insurance company would enter into a contract with a would-be insurer against death resulting from his suicide whilst sane? If asked to make such a contract it would investigate, not so much the tables of mortality, as the life, habits, financial, and social, condition, of the party applying. It would consult, not the Carlisle tables, but detectives.

The death which is insured against, is one which may result from mental or physical disease, not from the deliberate purpose of a sane person.

In this connection it may be well to refer to what is said by the appellant, in criticism of Judge Butler's charge "that every "contract of life insurance contains an implied condition that "the insured will not intentionally terminate his life, but that "the insurer shall have the benefit of the chances of its con- "tinuance until terminated in the natural, ordinary course of "events. It is on these chances that the premium is based."

The appellant quotes (Brief, 15) *Estabrooke vs. Union Mutual Life Ins. Co.*, 54 Maine, 224; *Bliss on Life Insurance*, section 239; and *Breasted vs. Farmers' Loan & Trust Company*, 4 Hill (N. Y.), 73; but in these cases reference is made to suicide resulting from insanity. Inasmuch as insanity is a mental disease, the chances of its occurrence can be ascertained and calculated. There is no statement by any text-book writer, or judge, to the effect that the chance of a sane man committing suicide may be, or ever has been, calculated.

The appellant refers to the fact that in insurance policies, where an exception is made in case of self destruction it is usual to add the words "sane or insane." Even if the insurer desires merely to exempt itself from responsibility in case of suicide by a "sane" man, it knows that to secure this end it is necessary to except self destruction, whether the insured be "sane or insane," because the fact of insanity must be left to a jury, with the chance of a verdict in favor of the estate, whether the suicide was "sane or insane."

In inserting the clause usually found in policies, insur-

ance companies manifest no belief that intentional destruction by a sane man does not avoid the policy, but also guard themselves against the effect of decisions holding that the avoidance will not occur in the case of policies owned by assignees. The insertion by the appellant, of the clause referred to, in all policies, is to avoid liability, in case of such intentional self destruction by a sane person, without danger of an anti-sympathetic verdict, and without regard to the ownership of the policy. A general form of policy being deemed desirable, the clause is inserted, upon which the appellant comments, in all cases, even though it will be superfluous if the policy be retained by the person committing suicide.

The late Arthur Biddle, in his work on Insurance, section 4, defines insurance to be:—

An agreement by the insurer to pay to the insured or his nominee a specified sum of money, either on the death of a designated life or at the end of a certain period, provided the death does not occur before, in consideration of the present payment of a fixed amount, or of an annuity till the death occurs or the period of insurance is ended.

In note 5 to that section Mr. Biddle quotes the definition of Baron Parke:—

A mere contract to pay a certain sum of money on the death of a person, in consideration of the due payment of a certain annuity for his life, the amount of the annuity being calculated, in the first instance, according to the probable duration of the life; and, when once fixed, it is constant and invariable.

He further quotes from Parke on Insurance, defining life insurance to be a contract—

By which the underwriter, for a certain sum, proportioned to the age, health, profession and other circumstances of that person whose life is the object of insurance, engages that the person shall not die within the time limited in the policy; or, if he do, that he will pay a sum of money to him in whose favor the policy was granted.

The same text writer further quotes Bunyon as defining life insurance to be—

A contract in which one party agrees to pay a given sum upon the happening of a particular event contingent upon the duration of human life, in consideration of the immediate payment of a smaller sum or certain periodical payments by another.

In *Comm. vs. Wetherbee*, 105 Mass., 149, 160, life insurance is defined to be—

An agreement by which one party, for a consideration (which is usually paid in money, either in one sum or at different times during the continuance of the contract of the risk), promises to make a certain payment of money upon the destruction or injury of something in which the other party has an interest.

In *Scot. Widows' Fund vs. Buist*, 3 C. S. C. (4th series), 1878, page 1081, Right Hon. John Inglis defines life insurance to be—

A mutual contract, by which the insurance company or insurance society, on the one hand, come under an obligation to pay a certain sum of money upon the death of the assured, and the assured, on the other hand, becomes bound to pay certain sums, either annually or otherwise, in the name of premiums, and these obligations are counterparts of one another.

Baron Parke, in stating that the sum to be paid by the underwriter is "proportioned to the age, health, profession and "other circumstances of that person whose life is the object of "insurance," excludes any idea of insuring against voluntary, intelligent, self destruction.

The suggestion in *Commonwealth vs. Wetherbee*, that the consideration paid to the insurer induces it to promise to "make a certain payment of money upon the destruction or "injury of something in which another has an interest," excludes the idea of any promise to pay the party interested in, and controlling, the life to be destroyed or injured, in case of voluntary, intelligent, self destruction.

The definition of Justice Inglis contemplates reciprocity under circumstances of uncertainty as to duration of the payments to be made by the insured, and as to the time the insurance money will be payable to his estate. The obligation on the part of the assured to pay, implies a continuance of payment until the occurrence of an event which is not within his control. The insurer has a right to rely upon such continuance.

The contract of insurance is entered into upon the theory that neither the insurer nor the insured can be certain, nor by

anything within the control of either can become certain, of the duration of life. The insurer, by assuming a multitude of risks, through an experience gathered from tables of statistics and otherwise, is enabled to fix upon a rate of premium to be paid to it which will be likely to produce a profit. It contracts with the insured with the obvious intention, not to insure him against the consequences of his own deliberate, voluntary, act, but against an event over which he can have no control. It would be an anomaly to hold that by a contract to pay the insured a certain sum in case of his death, in consideration of payments to be made by him until such death, the insurer means to give the insured a right, at his pleasure, at any time, to change his obligation to pay, into a right to receive.

2. A contract providing for payment in case of a deliberate killing of himself by the insured, whilst of sound mind, would be against the policy of the law.

In this connection it may be well to meet some suggestions of the appellant that "the laws as well as public opinion regard "a suicide as an unfortunate rather than a felon;" that the Constitution of Pennsylvania provides that "the estate of such "persons as shall destroy their own lives shall descend or vest, "as in cases of natural death;" and that Mr. Justice Green, of the Supreme Court of Pennsylvania, in Carpenter's Estate, 170 Penna., 203, expressed the opinion of that tribunal that a son convicted of murdering his father was entitled to share in the distribution of the father's estate under the intestate laws.

It does not follow that an act is not a crime, nor even a felony, because of the failure to forfeit the property of the person committing it. The extent of the punishment of the act, depends upon the statute. A greater or less punishment, even where the less punishment involves a failure to forfeit, does not determine the criminality, or lack of criminality, of the act. It may not be amiss to make some reference to the general subject of suicide, and to the manner in which the same has been, and is, regarded, in the past, and in the present.

It is conceded by the appellant that a person who murders the insured cannot recover the amount of the policy in his favor, and yet there is no forfeiture of the murderer's estate. It is said by Bishop in his book on Criminal Law, section 511:—

Suicide by the English common law is felony. But our law does not, like the English, allow in felony those forfeitures which alone can be inflicted on one whose life is ended; therefore self murder is practically not an offense with us, yet we recognize it as criminal when the opportunity arises indirectly.

Strahan, in his work on Suicide and Insanity, page 197, says:—

When it came to be seen that the liberty to terminate one's life was not in harmony with the teachings of the Christian Church, the act was forbidden, and pronounced a deadly sin; but so firmly was the custom rooted, that even after repeated denunciation, excuses were made and loopholes discovered for those who transgressed the new law. The Council of Arles, in 452 A. D., made a sweeping condemnation of all suicide, and forbade it under any circumstances; but long after this there were churchmen to be found who argued that suicide was justifiable under certain circumstances. We have seen (*ante*, page 19) that fanatical Christians voluntarily gave up life as late as the twelfth century, and even later.

As the Christian Church spread its benign wing over Europe and took hold upon the nations, it naturally did its utmost to induce governors to legislate in favor of its canons, but it was many centuries before any of the States of Western Europe were induced to recognize self destruction as a crime. It was during the tenth century that the civil law first made suicide a crime in England, and it was not until well on in the thirteenth century that the same course was taken in France. In both England and France, the old Roman system of confiscation of property was adopted, and, as was the case in Rome, the law did not apply to those "driven to the act by ill health or madness." In England, in Henry III.'s time, all the suicide's property, real or personal, escheated to the crown or the lord of the manor; but so far as freehold was concerned, the law soon fell into disuse, and confiscation of the personal estate was the sole civil penalty. This remained the law up till 1870, when all forfeitures for felony were abolished. This law of forfeiture for felony, as applicable to the suicide, was seldom set in motion for many years preceding its repeal; nevertheless, it was the letter of the law up till 1870. In England, at the present time, the suicide suffers no civil disability whatever.

In Greenidge's *Infamia in Roman Law* (London, 1894, page 73 and note 2) it is said:—

Certain kinds of suicide were always censured by the Roman law and gave rise to a form of condemnation of memory. * * * This discrimination between the motives to suicide was a leading principle in the later Roman law.

In Montesquieu on the Spirit of Laws (book 29, chapter IX.) it is said :—

man, says Plato, who has killed one nearly related to him, that is himself, not by an order of the magistrate, not to avoid ignominy, but through pusillanimity, shall be punished. The Roman law punished this action when it was not committed through pusillanimity, through weariness of life, through impatience in pain, but from a criminal despair. The Roman law acquitted where the Greek condemned, and condemned where the other acquitted. Plato's law was formed upon the Lacedaemonian institutions, where the orders of the magistrate were absolute, where shame was the greatest of miseries, and pusillanimity the greatest of crimes. The Romans had no longer those refined ideas; theirs was only a fiscal law. During the time of the republic there was no law at Rome against suicides. This action is always considered by their historians in a favorable light, and we never meet with any punishment inflicted upon those who committed it. Under the first emperors, the great families of Rome were continually destroyed by criminal prosecutions. The custom was then introduced of preventing judgment by a voluntary death. In this they found a great advantage: they had an honorable interment, and their wills were executed, because there was no law against suicides. But when the emperors became as avaricious as cruel, they deprived those who destroyed themselves of the means of preserving their estates, by rendering it criminal for a person to make away with himself through a criminal remorse.

Montesquieu (book 14, chapter XII.) further says :—

We do not find in history that the Romans ever killed themselves without a cause; but the English are apt to commit suicide most unaccountably; they destroy themselves even in the bosom of happiness. This action among the Romans was the effect of education, being connected with their principles and customs. Among the English it is the consequence of a distemper, being connected with the physical state of the machine, and independent of every other cause. * * * It is evident that the civil laws of some countries may have reasons for branding suicide with infamy; but in England it cannot be punished without punishing the effects of madness.

By the English common law, as we have seen by the quotation from Bishop, self murder was a felony. Though it has

not been in accordance with the spirit of American law to inflict the penalty of forfeiture upon the act, this has not been through an intention to strip suicide of its criminal character, because, as was said in the case of *Commonwealth vs. Mink*, 123 Mass., 426, "it continued to be considered *malum in se* "and a felony."

The repeal by the State of Pennsylvania of the common-law doctrine respecting a forfeiture of the estate in case of felony did not result from a policy peculiar to that State, but from one which was in accord with the general policy of the several Colonies and States, growing out of common conditions. The repeal was not confined to forfeiture in the case of suicides, but was extended to all forfeitures for crime. In some States the repeal was brought about by the mere repudiation of the doctrine by the courts, as one not applicable to the conditions of the State. In no case was the repeal because of reasons in any way applicable to this case.

By the English common law suicide was a felony.

In Bacon's Abridgment (vol. IV., page 196) it is said:—

A person who willfully destroys himself is termed a *felo de se* and is said to be guilty of the worst sort of murder, as he acts against the first principle of reason, which is that of self preservation.

In the same book, page 197, it is said:—

No person can be a *felo de se* who is under the age of discretion or *non compos* at the time he commits the fact.

On page 199 it is said:—

A *felo de se* forfeits all chattels, real or personal, which he hath in his own right, and also all chattels real whereof he is possessed either jointly with his wife or in her right.

Bishop (section 615) says:—

Felony is any offense which by the statutes or by the common law is punishable with death, or to which the old English law attached the total forfeiture of lands or goods or both, or which a statute expressly declares to be such.

This forfeiture test, he says:—

Appears to have been the original one to distinguish felony from misdemeanor. To quote from a painstaking writer (1 Gab., Crim. Law),

"The word *felon* is (according to the best opinions) derived from two northern words, *fee*, which signifies fief, feud or beneficiary estate, and *lon*, which signifies price or value, and the word *felony* imports rather the feudal forfeiture or act by which an estate is forfeited or escheats to the lord of the *fee*, than the capital punishment to which lay or "unlearned offenders were formerly liable in all cases of felony." And in illustration of this he mentions suicide and homicide by misadventure or in self defense, both of which were felonies, because followed by forfeiture, although there could be no punishment of death for the former and there was none for the latter.

In 1870, by statute 33 and 34 Viet., c. 23, Parliament abolished the forfeitures, which, as we have seen, had found little favor in this country.

Story, in his *Commentaries on the Constitution of the United States* (section 1300), says:—

The reasons commonly assigned for these severe punishments beyond the mere forfeiture of the life of the party attainted are these: By committing treason the party has broken his original bond of allegiance and forfeited his social rights. Among these social rights, that of transmitting property to others is deemed one of the chief and most valuable. Moreover, such forfeitures, whereby the posterity of the offender must suffer as well as himself, will help to restrain a man, not only by the sense of his duty and dread of personal punishment, but also by his passions and natural affections, and will interest every dependent and relation he has to keep him from offending. But this view of the subject is wholly unsatisfactory. It looks only to the offender himself, and is regardless of his innocent posterity. It really operates as a posthumous punishment upon them, and compels them to bear not only the disgrace naturally attending upon such flagitious crimes, but takes from them the common rights and privileges enjoyed by other citizens where they are wholly innocent, and however remote they may be in the lineage from the first offender. It surely is enough for society to take the life of the offender as a just punishment of his crime, without taking from his offspring and relatives that property which may be the only means of saving them from poverty and ruin. It is bad policy, too; for it cuts off all the attachment which these unfortunate victims might otherwise feel for their own government, and prepares them to engage in any other service, by which their supposed injuries may be redressed or their hereditary hatred gratified. Upon these and similar grounds, it may be presumed, that the clause (that no attainer of treason should work corruption of blood or forfeiture except during the life of the person attainted) was first introduced into the original draft of the Constitution, and after some amendments it was adopted without any apparent resistance. * * * The history of other countries abundantly proves that one of the strong incentives to prosecute offenses, as treason, has been the

chance of sharing in the plunder of the victims. Rapacity has been thus stimulated to exert itself in the service of the most corrupt tyranny, and tyranny has been thus furnished with new opportunities of indulging its malignity and revenge, of gratifying its envy of the rich and good, and of increasing its means to reward favorites and secure retainers for the worst deeds.

The correctness of these principles, as underlying the policy of the United States, which does away with the law respecting corruption of blood and forfeiture, is recognized by Mr. Bishop, and he adds that—

The Constitutions of some of the States and the statutes of others have interposed to prevent these forfeitures, while in most of them the courts never followed the English doctrine. Resulting from all it has become nearly universal that forfeitures and corruptions of blood, consequent upon attainder for treason or felony, and upon accidental homicide and the like, are unknown in this country.

Kent, in vol. II., page 386, of his Commentaries, says:—

Forfeiture of estate and corruption of blood under the laws of the United States, and including cases of treason, are abolished. Forfeiture of property in cases of treason and felony was a part of the common law, and must exist at this day in the jurisprudence of those States where it has not been abolished by their Constitutions or by statute. Several of the State Constitutions have provided that no attainder of treason or felony shall work corruption of blood or forfeiture of estate except during the life of the offender, and some of them have taken away the power of forfeiture absolutely, without any such exception.

As being among the first, he mentions Pennsylvania, Delaware and Kentucky, and as among the second, he names Connecticut, Ohio, Tennessee, Indiana, Illinois and Missouri.

He continues, though he does not name the States:—

There are other State Constitutions which impliedly admit the existence or propriety of the power of forfeiture by taking away the right of forfeiture expressly in cases of suicide, and in the case of deodand, and preserving silence as to other cases. And in one instance (Maryland) forfeiture of property is limited to the cases of treason and murder.

In North Carolina the English doctrine of forfeiture has never been followed. Said Chief Justice Taylor, in *White vs. Fort*, 3 Hawks. (1824), 264:—

I cannot think that forfeiture has had any force in this State since 1778, when it was declared what part of the common law should be in

force here. It is not probable that a prerogative should be designedly introduced which a most devoted, but at the same time an enlightened, supporter of the throne pronounced an odious one (Loft 90). It was introduced originally to increase the king's ordinary revenue, a branch of which it constituted; and if such means of increasing the revenue of the State rightfully existed, it would not have been overlooked by the succession of able men, who have filled the office of attorney-general at different periods.

In the case of *Commonwealth vs. Mink*, 123 Mass., page 425, appears the following:—

In the Colony of Massachusetts, by the Body of Liberties of 1641, all lands and heritages were declared to be free, not only from all feudal burdens, but from all escheats and forfeitures upon the death of parents or ancestors, be they natural, casual or judicial, to which later codes, besides inserting the word "unnatural," added "and that forever." The principle thus declared has always been followed in practice, and there has accordingly never been in Massachusetts any forfeiture upon one's death on conviction or suicide, unless under some particular statute creating the crime, of which no instance is remembered.

In section 616 of his work on *New Criminal Law*, Bishop says:—

Forfeitures and corruptions of blood consequent upon crimes are almost unknown (under our common law); yet in nearly all the States there are felonies, recognized as distinct grades of crime derived from the unwritten law of England. The punishment in this country is neither always nor usually death, and the same is now true also in the mother country.

Guernsey (page 20) says that in Norway the only penalty is that the body is not to be buried in consecrated ground, but this does not apply to a *non compos mentis*, and therefore the law is practically of no effect. He further states (page 33) that "suicide is a crime at common law, therefore no insurance can be recovered in such cases, unless the party is proved to be insane at the time of the act."

Guernsey (page 35) says:—

"Dr. Johnson was right when he said in regard to suicides, 'That they are often not universally disordered in their intellects, but one passion presses so upon them that they yield to it and commit suicide as a passionate man will stab another.'"

From the "traité des Assurances Sur La Vie," par Conteau, vol. II. (Paris, 1881), we take the following extracts as to European legislation:—

La loi de 1868 sur les caisses d'assurance créées par l'Etat, dispose dans son article 3 que l'assurance demeure sans effet "lorsque le décès de

"l'assuré, quelle qu'en soit l'époque, résulte de causes exceptionnelles qui seront définies dans les polices d'assurances."

Et le décret d'administration publique, rendu le 10 avril 1868 pour l'application de cette loi, précise les cas prévus dans son article 16: "Dans le cas où le décès résulte de suicide, de duel ou de condamnation judiciaire, l'assurance demeure sans effet conformément à l'article 3 de la loi du 11 juillet 1868." (Page 238.)

Code De Commerce Hollandais, article 307:—

L'assurance est encore nulle, si celui qui a fait assurer sa vie se rend coupable de suicide ou est puni de mort. (Page 238.)

Loi Belge, article 41:—

L'assureur ne répond pas de la mort de celui qui a fait assurer sa vie, lorsque cette mort est le résultat d'une condamnation judiciaire, d'un duel, d'un suicide, sauf la preuve que celui-ci n'a pas été volontaire, ou lorsqu'elle a eu pour cause immédiate et directe un crime ou un délit commis par l'assuré et dont celui-ci a pu prévoir les conséquences.

Dans ces divers cas, l'assureur conserve les primes s'il n'y a convention contraire. (Page 238.)

Code Hongrois, article 504:—

A moins que le contraire ne soit expressément stipulé dans le contrat, l'assureur n'est pas tenu au paiement de la somme assurée: 1°. Si l'assureur subit la peine de mort ou trouve la mort en duel ou par le suicide; 2°. si l'assuré meurt à la guerre ou par suite de blessures y reçues; 3°. si l'assurance a été prise contre la maladie ou les blessures corporelles et si l'événement dont la survenance forme la condition du paiement s'est produit par la faute de l'assuré ou du bénéficiaire; dans les cas notés 1 et 2, le bénéficiaire a le droit de réclamer le remboursement du tiers des primes d'assurance payées.

La loi belge a voulu prévenir la difficulté qui s'était élevée en France sur la preuve à faire du suicide. Sa rédaction en impose la charge à celui qui prétend que le suicide a été un accident, un fait maladif, un acte involontaire, "sauf la preuve que le suicide n'a pas été volontaire." (Page 239.)

M. Adan, in his "Etude faite en 1870 sur le projet de la "loi belge" (page 10, *et seq.*), cites the project of the Code of Prussia of 1857:—

L'assureur n'est pas tenu au paiement de la somme assurée, lorsque celui qui a fait assurer sa propre vie s'enlève la vie ou est puni de mort, ou trouve la mort en duel. (Page 239.)

He cites further:—

L. article 912 du projet de loi générale pour toute l'Allemagne, élaboré par une commission composée de délégués de divers Etats allemands réunis à Nuremberg, concu comme suit:

En ce qui concerne les assurances sur la vie, l'assureur n'est déchargé de son obligation au paiement de la somme assurée que dans le cas où celui, sur la vie duquel l'assurance a été prise, subit la peine de mort, trouve la mort en duel ou s'enlève lui-même la vie; dans ce dernier cas, l'assuré pourra prouver qui celui, pour le cas de décès duquel l'assurance a été prise, se trouvait dans un état d'irresponsabilité. Assuré est pris ici dans le sens de bénéficiaire.

C'est la doctrine que nous croyons la seule exacte. (Page 239.)

Par sentence du 10 octobre 1863, le Stadtgericht de Berlin déchargeait l'assureur de ses obligations, parce que l'enquête à laquelle il avait été procédé avait révélé que l'assuré s'était intentionnellement donné la mort. (Zeitschrift Wallmann, 3 année, page 623.) (Page 241.)*

Traité du Contrat D'Assurance Sur La Vie par J. Lefort (Paris, 1894), Tome 2, 50, 57, *et seq.* :—

Suicide. Le contrat d'assurance sur la vie repose sur le hasard. Le sinistre ne peut donner lieu à réparation de la part de la Compagnie d'assurances que s'il est dû à un événement fortuit. La convention intervenue est dépourvue d'effet quand la mort n'est point le résultat d'un fait accidentel, lorsqu'elle est la conséquence d'un acte volontaire. Les polices, dans leur très grande majorité, doivent donc exclure et elles excluent ce cas; l'assureur déclare formellement qu'il entend ne pas répondre des risques de suicide.

L'exclusion du cas où l'assuré se tue expressément édictée par le Code de Commerce italien (art. 450), par celui de l'Espagne (art. 180), ainsi que celui du Portugal (art. 458), par le Code de Commerce hongrois (art. 504), par le Code de Commerce néerlandais (art. 307), par les Codes de Commerce argentin (art. 698) et chilien (art. 575).

Conscrivant une jurisprudence antérieure (Bruxelles, 2 juin 1851, Belg. jud., IX, 15—Trib. civ. Bruxelles, 11 Mars 1861 et Trib. comm. Bruxelles, 4 décembre 1862; ibid., XIX 655; III, 1154), la loi belge du 11 juin 1874 (art. 41) déclare que la responsabilité de l'assureur cesse en cas de suicide volontaire. Cette disposition est d'ordre public, comme on l'a dit aux Chambres lors de la discussion de cet article. La loi du 16 mai 1891 sur les assurances, dans le Grand-Duché de Luxembourg excepte le suicide, sauf convention contraire. En Allemagne, il est reconnu également que le contrat perd ses effets contre l'assureur si l'assuré a à s'imputer sa mort prématurée par un suicide. (Page 50.)

Même si la police est muette sur la déchéance encourue par le fait de la mort volontaire, l'assureur est libéré. A défaut d'une stipulation expresse, il faut suppléer la clause protant annulation. La nature du contrat répugne, en effet, à ce que l'une des parties puisse, à son gré, modifier l'élément aléatoire qui lui sert de base. On doit aller plus loin, et réputer nulle toute espèce de convention maintenant le contrat en cas de suicide; l'ordre public et l'ordre moral s'y opposent, autant que la nature même du contrat qui, encore une fois, a pour but exclusif de garantir contre un événement imprévu et non pas contre un acte volontaire. (Page 52.)

* The above pages, 238, 239, 241, refer to Couteau, vol. II.

The suggestion is an obvious one, that whether or not for a crime an estate shall be forfeited, throws no light upon the question of whether or not, by reason of the crime, an insurance company shall be compelled to pay what was only agreed to be paid in case of involuntary death. Whilst under the common law, which forfeited the estate of the party committing a felony, there could be no recovery in any event by the representatives of the insured, because the insurance could not inure to its benefit, the question remains open, those representatives being allowed to take the whole estate of the insured, whether insurance money is part of such estate in cases where the insured voluntarily and intelligently terminates his own life. Under the common law the question was between the crown and the subject. At the present time the question is one of interpretation of the contract, and, inasmuch as the act upon which the representatives of the assured rest their claim is a crime, or partakes of the nature thereof, it would be against public policy to enable the assured to benefit his estate by the crime itself.

In Pollock & Maitland's History of English Law (vol. II., page 486) it is said:—

As to suicide Bracton seems to have had many doubts, and at one time he was for giving the name *felo de se* only to a criminal who killed himself in order to escape a worse fate. We think that the practice of exacting a forfeiture of goods in every case in which a sane man put an end to his own life was one that grew up gradually, and that thus the phrase *felonia de se* gained an ampler scope. We have seen before now that a similar forfeiture of the goods of one who dies obstinately intestate was imminent for awhile.

Blackstone, in speaking of suicide, refers to it as so “desperate and wicked an act.”

In Pollock & Maitland (page 357) we find the following statement in regard to the case of a “desperate” :—

These stories may be enough to illustrate the prevailing opinion about intestacy. It was not confined to England. What is more peculiar to England is that the prelates firmly established, as against the king and the lay lords, their right to distribute the goods of the intestate for the weal of his soul. It was otherwise in some parts of France, notably in Normandy. The man who had fair warning that death was approaching,

the man who lay in bed for several days, and yet made no will and confession, was deemed to die "desperate," and the goods of the desperate, like the goods of the suicide, were forfeited to the duke. The bishop of Llandaff complained to Edward I. that the magnates in his diocese would not permit him to administer the goods of intestates, and the king replied that he would not interfere with the custom of the country.

The charter of William Penn, which deals merely with the question of forfeiture, is hardly entitled to the weight suggested by the appellant.

We take the following extract from 2 Pennsylvania Colonial Records, page 186, as illustrative of the manner in which suicide was viewed about the time of Penn:—

At a council held at Philadelphia the 6th. Febr. 1704.

Present.

The Honble. John Evans, Esqre., Lieut. Govr.

Edward Shippen

Thos. Story Esq'rs. Wm. Trent

Griffith Owen Jos. Pidgeon &

Caleb Pusey James Logan.

A letter from Nehem. field of the County of Sussex, to the Gov'r, was read, Informing of one John Williams of ye said county, who was found to have committed self murder by hanging himself in his own loft and thereupon craving direction what should be done with ye estate, upon which a debate arose, whether those of the Terrs. have a right now to the privileges of the propts. charter, by the 8th article of which he was pleased to grant away all forfeitures of estate upon self murder, and being argued it was concluded on his point to be the safest method, and thereupon tis ordered that the coroner of the County shall take an inventory of the whole estate of the defunct, both real and personal, and take the same into his possession, or good security for its value from such persons as now have it, and claim any right to it, till such time as ye above said questions shall be decided. * * *

At a council held at Philadlia., 6, 1 Mo. 1794.

Present.

The Honble John Evans, Esqr'e Lieut. Govr.

Wm. Clark Wm. Trent.

Griffith Owens, Esq'rs.

Richard Hill, James Logan. * * *

Cornelius Wiltbank, brother in law to Jno. Williams, who hanged himself at Lewis, having waited on the Govr. and acquainted him that he desired and requested letters of administration on the said defuncts estate and the Govr. acquainted him with the orders made concerning that

estate, the six of the last month. The said Corn'll Wiltbank appeared at this Board and pleads that his brother in law was not *compos mentis* at the times of making himself away, that it plainly appears to be so by the inquest then past upon him.

But tis questioned by the board whether that inquest being made by a justice of the county, and no coroner, be valid, and hereupon, tis left to the said Wiltbank and his council to prove that the said inquest is valid in law, and should it be so prov'd that then he further make it appear that by the tenor and words thereof, the defunct was not *compos mentis* in the eye of the law and his estate not forfeited.

Whether suicide be a felony or not, and whether it be punishable by forfeiture or not, it is certain that the act of self destruction, intelligently and deliberately committed by a man of sound mind, is contrary to the public interest. It follows, as a consequence, that compensation for such self destruction is violative of public policy. See *Moore vs. Woolsey* (4 E. & B., 243), quoted *infra*.

In *Horn vs. Anglo-Australian & Universal Family Ins. Co.*, 30 Law, J. (Chan.), 511, in which there was no provision against suicide in the policy, it was contended that the contract was void for the reason that the assured had committed the act, although, as it seems, insane. Suicide, it was said, was a felony, and public policy forbade the upholding of the contract. It was held, however, that the insanity of the assured excluded the application of the public policy doctrine, whereas if the assured had been sane, it was intimated, the act would have been a crime and have rendered the policy void.

In *Amicable Society vs. Bolland* (4 Bligh, N. S., 194), commonly called "Fauntleroy's case," a policy was held void for the reason that the assured had suffered death for felony. The argument of counsel for the appellant was as follows:—

Fauntleroy, by the effect of the contract of insurance, became a member of an incorporated partnership, the object of which, according to the recital and substance of the charter, went to provide a maintenance for the widows, children, &c., upon the casualty of death; and it would be a fraud upon the partnership if any partner by his own act could create a demand upon the funds which was never contemplated in the contract. The contract was in the nature of a wager upon an uncertain event. The risk insured was the chance of death in the ordinary course of events. The risk upon which the claim arises is the chance of escape upon the commission of a capital felony, which in effect is not a chance

but a certainty in the eye of the law, and death, which is the punishment, is the act of the guilty party; for the punishment follows as a necessary consequence of the crime, and the criminal must intend the consequence when he does the act. At all events, the risk (if it be one) of death in consequence of the commission of a capital felony is not the risk insured, but a different one, depending on the will of one of the parties to the contract, which cannot be so construed as to leave it in the option of either party to determine the event. The principles of law established in marine insurance are applicable to this case. In policies upon ships, if the loss is not the direct and immediate consequence of the risk insured, or if the owner destroys the ship, or it perishes by his default or in case of smuggling commerce with the king's enemies, &c., nothing can be recovered on the policy. So would it be on policies of insurance against fire, if the house were purposely burnt by the party insured. If insurance against such an event could be deemed a part of the contract, a risk insured within the intention of the parties, then it is an illegal wager, a contract, the performance of which no court of justice will enforce.

On the other side it was argued that it did not follow, of necessity, that the party would be hanged for the felony—he might escape or be pardoned—that the event was not a certainty, but a chance, upon which the policy depended, so that, if Fauntleroy had committed suicide, instead of a crime for which he might or might not suffer death, the claimant would have been deprived of his only ground of argument.

It was also, on the part of the insurer, contended that the claimants, who sued as assignees, could not recover, as their assignor's property vested in the crown by attainder; but it was contended on the other side, that:—

The property in a policy of assurance upon life is a property increasing in value from year to year as the premiums are paid, and it is transmissible and purchased daily as property by assignment, even by the insurance companies themselves. This property was assigned by Fauntleroy before his attainder and before the act of felony, and the society would have purchased the interest of his assignee, at its value, the day before the attainder.

It was decided, without reference to the forfeiture by attainder, that the assignee had no right to recover upon grounds of public policy.

Lord Lyndhurst said:—

Suppose that in the policy itself this risk had been insured against; that is, that the party insuring had agreed to pay a sum of money year

by year, upon condition that in the event of his committing a capital felony, and being tried, convicted and executed for that felony, his assignees shall receive a certain sum of money, is it possible that such a contract could be sustained? Is it not void upon the plainest principles of public policy? Would not such a contract, if available, take away one of those restraints operating on the minds of men against the commission of crimes, namely, the interest we have in the welfare and prosperity of our connections?

Bunyon, commenting upon this case, adds (third edition, page 96):—

It would render those natural affections which make every man desirous of providing for his family, an inducement to crime; for the case may well be supposed of a person insuring his life for that purpose with the intention of committing suicide. For a policy, moreover, to remain in force when death arose from any such cause would be a fraud upon the insurers, for a man's estate would thereby benefit by his own felonious act. Hence the rule of law when there is no condition whatever; but in that case, if the suicide or self destruction takes place when the assured is *insane* and not accountable for his acts, the rule arising from public policy does not apply, and his representatives are entitled to the policy money.

In the Fauntleroy case, the crime and consequent death vitiates the policy; in the present case, the fraud and concurrent death for the same reason had the same effect. It is an elementary principle that fraud vitiates everything. This same law as to public policy applies to prevent a recovery, not only by the beneficiary who has brought about the death of the assured, but also by the assignee *for value* of the beneficiary.

In Cleaver *vs.* Mutual Reserve Life Assn., L. R., 1892, 1 Q. B., 147, a case arising out of the celebrated Maybrick murder, and decided in July, 1891, the solicitor who acted for Mrs. Maybrick on her trial for the murder of her husband, received from her an assignment of certain policies on her husband's life, payable to herself, to secure his fees. He brought the action upon the assignment. The defense was upon the ground of public policy. It was contended by Sir Charles Russell, plaintiff's counsel, that the law did not sustain such a defense, and that the Fauntleroy case (*supra*) did not apply, for the reason that in that case, as in others referred to, "the

"parties suing were representatives of the persons who effected "the policy and then committed suicide or murder, or had de- "signed to do so in order to realize the insurance." But the Maybrick case, he contended, "is wholly different, for it does "not appear that Mrs. Maybrick ever knew of the insurance, "so that it could not have had any connection with the death "of her husband."

Conceding all this, the defense (conducted by Sir Edward Clarke) argued that the principle of the Fauntleroy case was the same, namely, "that public policy must prevent a person "from profiting by his own crime." This was the court's view. "The defense," said Willis, J., "was solely rested on the "ground of public policy. It was an action brought for the "benefit of a murderer to recover money due on the death of "the murdered man, her husband," and "it was impossible to "conceive a stronger case against public policy."

In *Armstrong vs. Mutual Life Ins. Co.* (117 U. S., 600), the court said :—

It would be a reproach to the jurisprudence of the country if one could recover insurance money payable on the death of a party whose life he had feloniously taken.

In thus saying, this court practically adopted the views expressed in the Cleaver cases, for, although in the latter it was the murderer's assignee who was suing, the judge in his opinion expressed his inability to regard the action otherwise than as for the benefit of the murderer, notwithstanding the important fact that the assignment of the policy was executed before the conviction, for a *bona fide* and valuable consideration, viz., for services to be rendered and which were afterwards rendered.

But there is an express recognition of the principles enunciated in the argument of counsel for the insurer in Fauntleroy case, if not an adoption thereof, by the court, in *Sup. Com. vs. Ainsworth* (71 Ala., 436), in these words :—

In all contracts of insurance there is an implied understanding or agreement that the risks insured against are such as the thing insured, whether it is property or health or life, is usually subject to, and the assured cannot voluntarily and intentionally vary them. Upon principles of public policy and morals, the fraud or the criminal misconduct of

the assured is, in contracts of marine or of fire insurance, an implied exception to the liability of the insurer. (*Waters vs. The L. Ins. Co.*, 11 Peters, 213; *Citizens' Ins. Co. vs. March*, 41 Penn., 386; *Chandler vs. Worcester M. F. Ins. Co.*, 3 Cushing, 328.) Death, the risk of life insurance, the event upon which insurance money is payable, is certain of occurrence; the uncertainty of the time of its occurrence is the material element and consideration of the contract. It cannot be in the contemplation of the parties that the assured, by his own criminal act, shall deprive the contract of its material element, shall vary and enlarge the risk and hasten the day of payment of the insurance money. The doctrine asserted in *Fauntleroy's* case, that death by the hands of public justice, the punishment for the commission of a crime, avoids a contract of life insurance, though it is not so expressed in the contract, has not, so far as we have examined, been questioned, though the case itself may have led to the very general introduction of the exception into policies. The same considerations in reasoning which supports the doctrines seem to lead, of necessity, to the conclusion that voluntary criminal self destruction, suicide, as defined at common law, should be implied as an exception to the liability of the insurer, or, rather, as not within the risks contemplated by the parties, reluctant as the courts may be to introduce by construction or implication exceptions into such contracts, which usually contain special exceptions.

In *Jackson vs. Foster* (5 *Jurist* (N. S.), 547, 1247) the same views are substantially adopted.

Upon a similar principle to that which would forfeit a policy for a felonious suicide without an express condition to that effect, a death caused by an abortion voluntarily procured by the assured to be committed upon her, has been held to vitiate the contract on the ground of public policy.

Hatch vs. Mutual Life Ins. Co., 120 Mass., 550.

Judge Manle, in the case of *Borradaile vs. Hunter* (5 *M. & Gr.*, 639, 653), construing the effect of a condition vitiating the policy if the assured "should die by his own hand," said:—

To protect the insurers against increase of risk arising out of this temptation is the object for which the condition in question is inserted. It ought therefore to be so construed as to include those cases of self destruction in which, but for the condition, the act might have been committed in order to accelerate the claim on the policy, and to exclude those in which the circumstances, supposing the policy to have been unconditional, would show that the act could not have been committed with a view to pecuniary interest. This principle of construction requires and accounts for the exclusion from the operation

of the condition of those cases falling within the general sense of its words to which it is admitted not to apply, such as those of accident and delirium. To apply it to the present case: It appears by the finding of the jury that the testator voluntarily threw himself into the water, intending to destroy his life, but that at the time he did so he was not capable of judging between right and wrong; and, as a man who drowns himself voluntarily may do it to found a claim on a policy, though he may not think it wrong to do so, or though his mind may be so diseased that he does not know right from wrong—which, as I understand the finding of the jury, was the case with the testator—it seems to me that the object of the condition would not be effected unless it comprehended such a case of self destruction.

It was accordingly held that the policy was avoided.

Judge Erskine in the same case said :—

The act of self destruction should be the voluntary and willful act of a man having at the time sufficient powers of mind and reason to understand the physical nature and consequences of such act, and having at the time a purpose and intention to cause his own death by that act; and that the question whether at the time he was capable of understanding and appreciating the moral nature and quality of his purpose is not relevant to the inquiry, further than as it might help to illustrate the extent of his capacity to understand the physical character of the act itself.

Again, he said :—

The fair inference to be drawn from the nature of the contract would be that the parties intended to include *all willful acts* of self destruction, whatever might be the moral responsibility of the assured at the time; for, although the probable results of bodily disease producing death by physical means may be the fair subjects of calculation, the consequences of mental disorder, whether produced by bodily disease, by external circumstances or by corrupted principle, are equally beyond the reach of any reasonable estimate. And reasons might be suggested why those who have the direction of insurance offices should not choose to undertake the risk of such consequences, even in cases of clear and undoubted insanity. It is well known that the conduct of insane patients is, in some degree, under the control of their hopes and fears, and that especially their affection for others often exercises a sway over their minds where fear of death or of personal suffering might have no influence.

Mr. Cooke, referring to the exception from risk if the assured "should die by his own hand" (page 69), says, in effect :—

The weight of authority is decidedly to the effect that the expression, "die by his own hand," involves not only the idea that the act of self destruction was voluntary, but that it was accompanied with a disability to distinguish right from wrong, or as it has been expressed, to understand its moral aspect and character. That is to say, if the insured vol-

unjustly kills himself by shooting himself through the heart, firmly believing that the act of pulling the trigger is morally right, but also fully aware that his death will, in the natural course of things, result from such act, the contract is, according to what we regard as the better view, avoided if it contains the exception in question. But according to the view supported by the weight of authority, it is not avoided, inasmuch as the insured (erroneously) believed his act to be morally right, citing Mutual Co. *vs.* Terry, 15 Wall, 580, 591; Charter Oak Co. *vs.* Rodel, 95 U. S., 232; Manhattan Co. *vs.* Broughton, 109 U. S., 121; Accident Co. *vs.* Crandall, 120 U. S., 527, 531; Conn. Mut. Co., *vs.* Groom, 86 Pa. St., 92; Life Assn. *vs.* Waller, 57 Ga., 533; Phadenhaur *vs.* Germania Co., 7 Heisk (Tenn.), 567; Waters *vs.* Conn. Mut. Co., 2 Fed. Rep., 892; Moore *vs.* Conn. Mut. Co., 1 Flippin, 363; Blackstone *vs.* Standard Co., 74 Mich., 593, 610 (1889, where the authorities are elaborately examined); Schultz *vs.* Ins. Co., 40 Ohio St., 217; New Home Ass. *vs.* Hager, 29 Ill. App., 437; Scheffer *vs.* National Co., 25 Minn., 534.

The following array of respectable authorities are cited to sustain the view advanced by the author, that the exception from risk if the assured "should die by his own hand" covers all *cases of intentional* self destruction: Borradaile *vs.* Hunter, 5 M. & Gr., 639; also, 5 Scott, N. R., 418; Dormay *vs.* Borradaile, 10 Beavan, 335; Ciift *vs.* Schwabe, 3 C. B., 437; Dufaur *vs.* Professional Co., 25 Beavan, 599; Van Zandt *vs.* Mut. Ben. Co., 55 N. Y., 169; Weed *vs.* Mutual Benefit Co., 70 N. Y., 561; Meacham *vs.* N. Y. State Mut. Ben. Assn., 120 N. Y., 237; Dean *vs.* Am. Mut. Assn., 4 Allen (Mass.), 96.

The case of Blackstone *vs.* Insurance, 74 Mich., 593, is a very instructive one. It was decided as recently as 1890, and contains a review of the authorities upon this subject. The policy sued upon, contained a provision against recovery if the insured died *by suicide*, with no such words as "sane or insane" to extend the company's exemption from liability. Judge Long (page 605) said:—

Upon the question of voluntary suicide, intentionally committed by a sane man in the possession of his faculties, knowing how to adapt means to ends, and conscious of the immorality of the act, there is no difference of opinion, and all authorities agree that such self destruction is within the exemption; and all authorities likewise agree that an accidental death, as by taking poison by mistake, or shooting one's self with a pistol, supposing it not to be loaded, or falling from a building, or death happening in any way by the unintended act of the party dying, is not within the exemption. But whether suicide by an insane man is also within the exemption has been the question in dispute, and upon

this two prominent and different doctrines have been maintained. On the one hand it is maintained that if the act be voluntarily done in pursuance of an intelligent purpose, and intentionally and intelligently carried out by the proper adaptation of means to ends, it is suicide on the part of the insured, or death by his own hands, although insanity exists to such an extent that he may not be able to appreciate the moral qualities of the act. On the other hand, it is maintained that, however intelligently the act may be done, if at the time the will be overpowered by an uncontrollable impulse, or the party being unable to appreciate the moral character of the act, it is not within the meaning of the provision.

In support of the first-mentioned doctrine, the learned judge cites *Borradaile vs. Hunter* (5 Man. & Gr., 638) and *Dean vs. Ins. Co.* (4 Allen, 96), in which, as he says, the Supreme Court of Massachusetts held substantially the doctrine as laid down in the Borradaile case; *Ins. Co. vs. Graves* (6 Bush, 268), in which the Supreme Court of Kentucky were divided upon the question of the soundness of the Borradaile case, but agreed that when the suicide was committed during an uncontrollable passion, caused by intoxication, the condition was broken and the policy avoided; *Cooper vs. Ins. Co.*, 102 Mass., 127; *Van Zandt vs. Ins. Co.*, 55 N. Y., 169.

In support of the second-mentioned doctrine he cites *Breasted vs. Trust Co.* (4 Hill, 73 S. C., 8 N. Y., 299); *Eastabrook vs. Ins. Co.* (54 Me., 224); *Ins. Co. vs. Terry* (15 Wall, 580), which he himself approves, and calls the leading case upon the subject and which follows "the New York doctrine" as laid down by Chief Justice Nelson in *Breasted vs. Trust Co.*; *Ins. Co. vs. Rodel* (95 U. S., 237); *Ins. Co. vs. Broughton* (109 U. S., 121); *Ins. Co. vs. Moore* (34 Mich., 45); *Waters vs. Ins. Co.* (2 Fed. Rep., 892); *Moore vs. Ins. Co.* (3 Ins. L. J., 444); *Merritt vs. Ins. Co.* (55 Ga., 103); *Phillips vs. Ins. Co.* (26 La. Ann., 404); *Scheffer vs. Ins. Co.* (25 Minn., 534); *Ins. Co. vs. Groom* (86 Penn., 92); *Hathaways' Adm'r vs. Ins. Co.* (48 Vt., 335).

Continuing, Judge Long (page 610) said:—

The effect of this doctrine is that, in order to work a forfeiture under such a policy on the ground of self destruction, the insured must have had sufficient mental capacity, not only to understand that the act will destroy his life, but also to distinguish its moral quality and consequences—the right and wrong of it—and must perform the act, not under

any uncontrolled impulse resulting from insanity, but voluntarily, with the intent to end his life; in other words, that it must be *an act done with an evil motive*. We think that this doctrine is supported by the great preponderance of authority in this country and must be conceded to be the prevailing American doctrine; and it seems to us to be the safer and more reasonable and more consistent doctrine. It agrees with the general rule as to the excusatory feature of insanity in civil as well as in criminal cases. It also operates to prevent forfeiture, which is a favorite principle of an enlightened jurisprudence. Nor can it have any injurious effect, since insurers may always frame such contracts to suit themselves, and may, if they choose, insert express stipulations to the effect that insanity shall not in any case prevent an avoidance by the suicide of the insured.

We give the following extracts from the books on Life Insurance. Mr. Cooke (page 67) says:—

If performance by the insurer is in general terms conditioned on the death of the insured, there seems no valid reason why death by committing suicide should not be included, and such is the general doctrine, citing Darrow *vs.* Family F. Socy., 116 N. Y., 537, 542; Fitch *vs.* Am. Pop. Co., 59 N. Y., 557, 573; Patrick *vs.* Excelsior Co., 67 Barb., 202; Northwestern B. A. *vs.* Wanner, 24 Ill. App., 357; Wells *vs.* Rebstock, 29 Minn., 380. To the contrary, however, Sup. Com. K's. Golden Rule *vs.* Ainsworth, 71 Ala., 436, 447; and see Hartman *vs.* Keystone Co., 21 Pa., 466, 479; and compare Am. Co. *vs.* Isett, 74 Pa., 176. "A *fortiori*," he continues, "is thus true of self destruction by an insane person." (Citing Horn *vs.* Anglo-Ans. Co., 30 L. J. Ch., 510. "But this rule is subject to the reasonable limitation that one effecting the insurance with intent to commit suicide, and committing suicide in pursuance of such intent, is guilty of a fraud that will avoid the contract, even though it contain no provision 'as to suicide.'")

Mr. Cooke cites, in support of the limitation, Smith *vs.* National Benefit Society, 123 New York, 85; Moore *vs.* Woolsey, 4 El. and Bl. 243.

It would seem that the fact of the suicide would itself afford the strongest feature of the evidence that the insurance was effected with intent to commit it. How is the intent to be established until the act is committed? Would it lie with the insurer to repudiate the contract before the act? If so, upon what evidence? The correct view seems clearly to be that self destruction by a *sane man* is the consummation of a fraudulent purpose, and, whether that purpose was conceived before, or after, the policy was taken out, is entirely immaterial.

Mr. Bacon, in his work on Benefit Societies and Life Associations, seems to take the same view as Mr. Cooke that suicide is no defense unless it is so stipulated, citing *Horn vs. Anglo-Aus. Co.*, 4 L. T. (N. S.), 142, which does not support the statement, but that it is a perfect defense that the policy was taken out with the deliberate purpose of committing suicide. He does not refer to any of the cases cited by Mr. Cooke, saving that of *Smith vs. Natl. Ben. Socy.* (123 N. Y., 91). This case is undoubted authority for the point of vitiation of the policy when taken out with intent to defraud, but it is also entirely consistent with, if not actually in support of, the view, that suicide by a sane person is a defense, whether the intent to commit it arose before, or after, the policy was taken out. To quote from the opinion:—

Some of this evidence was resisted upon the ground that death by suicide was no defense under the terms of the policy. That is true, but the defense was fraud, and suicide the ultimate agency by which the fraud was accomplished.

Mr. Porter, in his *Law of Insurance* (pages 129, 130), states the broad doctrine, on the authority of the Fauntleroy case, that if death ensues from self destruction by the insured while sane, the insurer is not liable.

Mr. Blayney, whose work was published in 1837, says (page 70):—

It is undoubtedly incumbent on assurance officers to protect themselves against losses which may be occasioned by any unlawful or *fraudulent act* of the assured, but as the cases above alluded to, especially *that of suicide*, usually originate from causes adverse to that of a design upon an assurance officer, namely, aberration of mind, &c., the premiums, he thinks, should be restored.

It will be seen that the author classes fraud with illegality as matter which will avoid the policy.

Mr. Crawley in his work (page 54) says, that the proviso that the policy shall remain in force to the extent of any *bona fide* interest acquired by a third person, is introduced for the benefit of the insured to render the policy marketable (citing *Cook vs. Black*, 1 Ha., 393).

Assignment means assignment by contract, not by operation of law, and the assignee in bankruptcy of the insured has no claim. *Jackson vs. Foster* (5 Jur. N. S., 547, 1247). See *Moore vs. Woolsey* (4 E. & B., 243) as to the rights of third persons.

The first case dealing with the question of the effect of suicide on a life insurance policy containing clauses against it, was *Breasted vs. The Farmers' Loan & Trust Co.* (4 Hill, 74), N. Y., 1843. The policy contained a clause of forfeiture in case the insured died by his own hand. It was held in that case that the insanity of the insured at the time of his death by suicide was no defense. This decision was sustained by the Court of Appeals, when it came up ten years afterwards (8 N. Y., 303), by five judges against three. On this appeal, *Borradaile vs. Hunter* (5 M. & Gr., 639), which was the first English case on a similar question, and was decided in 1843, was cited as establishing that in England it is the law, under this particular form of a policy, in every case of suicide, that whatever may have been the mental condition, if the policy contained a clause which makes it void "if the 'assured shall die by his own hand or act,'" or words to that effect, it becomes void in such case. (See *Clift vs. Schwab*, 3 M. Gr. & S., page 437.)

The principle of the decisions in the English cases is founded upon the right of contracting parties to make any exception they may agree upon at the time of the issuing of the policy, and that it must be strictly construed in favor of public policy.

In Germany and throughout continental Europe (with the exception of France—where the courts have given conflicting decisions as to the construction of the conditions against suicide), the courts coincide with the views expressed in the English decisions and hold the policy void in such cases. There have been many conflicting decisions in American courts on this same subject, but they have not, any of them, gone so far as the English cases.

VanZandt vs. Mutual Benefit Life Ins. Co. (55 N. Y., 170) is a very instructive case. It deals with what is left for the jury to decide (see pages 176 and 179 *et seq.*); and with the degree of insanity.

Guernsey, *Penal Laws against Suicide* (page 39), says:—

The most important decision, and one in which the American doctrine at the present time is plainly laid down to its full extent, has very recently been decided by the Court of Appeals of Maryland. (*Knickerbocker Ins. Co. vs. Peters*, 42 Md., 414.)

It holds that it must be proved that the assured was insane when the act was done.

The apparent conflict among the American adjudication on this point is chiefly caused by the peculiar wording and construction. * * * The current of these decisions when the policy is properly worded is gradually approaching *Leon vs. American Mutual*, 4 Allen (Mass.), 696, and will ultimately be in effect the same as the English decision, for they are the most just to insurers and are according to the common law, and are for the welfare of the community as tending to discourage and prevent self destruction.

Guernsey (page 43) instructively puts his views of the impropriety of allowing any insurance on a life destroyed by suicide as being against public policy.

The appellant concedes that the insured, under a policy of fire insurance, cannot recover for a fire resulting from his own deliberate act; but contends that it is different where the estate of one insured in a life insurance policy, sues in the case of a voluntary destruction of his life by the insured whilst of sound mind. We submit, however, that there is a complete analogy in the two cases. Runk had an insurable interest in his own life similar to that which he held in his own property.

In *Conn. Mutual Life vs. Schaefer*, 94 U. S., 460, this court says:—

In marine and fire insurance the difficulty is not so great, because there insurance is considered strictly as an indemnity, but in life insurance the loss can seldom be measured by pecuniary values. Still, an interest of some sort in the insured life must exist. * * * It is well settled that a man has an insurable interest in his own life.

In *May on Insurance*, section 7, under the head of "Purpose," we find:—

A distinction has sometimes been taken between marine and other insurances, and life insurance, on the ground that while the former have for their object to indemnify for loss, the latter is an absolute engagement

to pay a fixed sum on the happening of a certain event, without reference to any damage in fact, suffered by the insured in consequence. But this distinction is superficial, and rests rather upon the mode of applying the principles and of determining the amount of indemnity, than upon any difference in the principles themselves. Insurance upon a ship or a house at a fixed valuation, and at an annual premium, until one is lost or the other is burned, is in no way different in principle from the insurance of a life at a fixed valuation and at an annual premium until death. And there may be between the vigor of manhood and the decrepitude of old age the same change in value that the house or the ship may undergo. In the one case, the insurance is against the loss of capital, which produces income; in the other, it is against the loss of faculties, which produce income. There is the same difference, having reference to the question of indemnity, between valued and open policies in both fire and marine insurance than there is between an open policy in either and a policy of life insurance. In open policies the question of the amount of the indemnity is left to be determined when the contingency upon which it becomes due shall have happened, while in valued policies and policies on lives the value of the interest which the insured seeks to protect is agreed upon by the parties and inserted in the policy, and so the amount of indemnity which shall become due on the happening of the given contingency is predetermined. The purpose in all cases is alike—indemnity for the loss of a valuable interest. That in some cases the value is fixed with great precision, while in others it is of such a speculative character as to admit of the greatest latitude of estimate, not to say of conjecture, does not make it the less a valuable interest. There must be this interest to support the contract. This is essential. What it shall be, provided it be valuable, and how its value shall be arrived at, are simply incidental questions; and however they may be answered, do not change the nature of the contract from one of indemnity based upon an interest to be protected, to a mere wager based upon no interest whatever. The analogies between life and marine policies have been matters of frequent judicial observation. When it is said that fire, life and other insurances, where valued policies obtain, are contracts of indemnity, it is simply intended that to support them the insured must have some interest in the thing insured. The amount of this interest, and the amount to be paid in case of loss, may be fixed by arbitrary agreement, even before the loss, according to the modern practice, if not strictly according to the ancient doctrine, of insurance.

In *Britton vs. The Royal Insurance Co.*, 4 Foster & Finlays, 908, Willes, J., says:—

A fire insurance * * * is a contract of indemnity; that is, it is a contract to indemnify the insured against the consequences of a fire, provided it is not willful. Of course, if the assured sets fire to his home, he could not recover. That is clear.

No express exception is necessary in the policy.

In *Columbia Insurance Co. vs. Lawrence*, 10 Peters, 507, the fire policy excepted loss or damage by fire "that may "happen or take place in consequence of any invasion, civil "commotion, riot or any military usurpation." This court, through Mr. Justice Story, said (page 518) :—

The exception, then, may fairly be construed to leave all other losses, except fraudulent losses, within the reach of the policy, upon the known maxim of law that an exception expressly carved out of a general clause leaves all other cases within the scope of the clause. Fraudulent losses are necessarily excepted upon principles of general policy and morals, for no man can be permitted in a court of justice to allege his own turpitude as a ground of recovery in a suit.

If the insured sets fire to the building, that fact is a fraud and avoids the policy. In *Wightman vs. Western M. & F. Co.*, 8 Robinson (La.), 442, the defense was that plaintiff set fire. The court said :—

If the defendants can establish such circumstances as will, according to the established rules of our jurisprudence, fix a fraud upon the plaintiff, it will, in our own opinion, annul the policy.

The Supreme Court of Pennsylvania, in laying down the rule in case the insured burnt the building, held that it was error to instruct the jury that the testimony to establish the fact must be as strong as would be required to convict the assured in a criminal court on a charge of arson. The court referred, by way of analogy, to *Continental Co. vs. Delpeuch*, 82 Pa. St., 235, where it was said :—

The mere fact of death in an unknown manner creates no legal presumption of suicide. Upon evenly-balanced testimony the law assumes innocence rather than crime. Preponderating evidence is necessary to establish the latter.

One may burn his house at common law, and there is no arson. One may take his own life, and there is no felony. But neither in the first nor in the second case would moneys be recovered from an insurance company.

While insanity is a defense to arson, it is neither a defense in the case of *fire* insurance or of *life* insurance.

In *Williams vs. Hays*, 143 N. Y., 453, it is said:—

It is an unquestioned rule of law that an insurance company cannot successfully defend an action upon its policy to recover for a loss by showing that the insured destroyed the property while insane, or that its destruction was caused by the carelessness of his agents and servants.

Arson is committed if there be sanity, and there can be no recovery for moneys insured; but there is no arson if there be insanity, and there can be a recovery. So in life insurance. Where attempt at suicide is a felony, insanity is a defense, but a sane attempt^t is punishable. And there can be a recovery if the death is by the act of an insane person, but not if it be by the act of a sane man.

Williams vs. Hays (1894), 143 N. Y., 442, was an action brought by the assignee of a marine insurance company to recover moneys paid by the company on account of the loss of a vessel, alleged to have been caused by the defendant's negligence. The charge of negligence was based upon the following facts: The vessel, having started from the coast of Maine bound south, encountered storms at the outset, and, for two days, defendant was constantly on duty. Becoming exhausted, he went below, leaving the vessel in charge of the mate. He took a large dose of quinine and laid down. The mate, finding that the rudder was broken and useless, called him on deck again. He refused to believe that the vessel was in any trouble, and declined the help of two tugs, the masters of which saw the difficulty under which the vessel was laboring and successively offered to take her in tow, cautioning defendant that she was gradually and certainly, drifting upon the shore. In broad daylight, she did drift upon the shore and became a total wreck. The defendant claimed that from the time he went to his cabin until the vessel was wrecked, he was unconscious from insanity. The case was submitted to the jury on the theory that the defendant, if sane, was guilty of negligence causing the destruction of the vessel, but if insane, was not responsible for the loss through any conduct on his part which, in a sane person, would have constituted such negligence as would have imposed responsibility. A verdict was rendered in favor of

the defendant, and the judgment entered thereupon was affirmed on appeal to General Term. From the General Term judgment an appeal was taken to the Court of Appeals, which reversed and ordered a new trial.

Judge Earl (page 446) said:—

Parsons and Loud had insured their interest in the Phoenix Insurance Company, and it paid them the loss. It thus became subrogated to their claim, if any, against the defendant for his negligence or misconduct in the management of the vessel, and it assigned that claim to the plaintiff.

The important question for us to determine then is whether the insanity of the defendant furnishes a defense to the plaintiff's claim, and I think it does not. The general rule is that an insane person is just as responsible for his torts as a sane person, and the rule applies to all torts, except perhaps those in which malice, and, therefore, intention, actual or imputed, is a necessary ingredient, like libel, slander and malicious prosecution. * * * The liability of a lunatic for his torts, in the opinions of judges, has been placed upon several grounds. The rule has been invoked that when one of two innocent persons must bear a loss, he must bear it whose act caused it. It is said that *public policy* requires the enforcement of the liability that the relatives of a lunatic may be under inducement to restrain him, and that tortfeasors may not simulate or pretend insanity to defend their wrongful acts causing damage to others.

Continuing, Judge Earl quotes with approval from Cooley on Torts, in parts, as follows:—

The question of liability in these cases as well as in others, is a question of policy, and it is to be disposed of as would be the question whether the incompetent person should be supported at the expense of the public or of his neighbors or at the expense of his own estate. If his mental disorder makes him dependent, and at the same time prompts him to commit injuries, there seems to be no greater reason for imposing upon the neighbors or the public one set of these consequences rather than the other; no more propriety or justice in making others bear the losses resulting from his unreasoning fury when it is spent upon them or their property than there would be in calling upon them to pay the expense of his confinement in an asylum when his own estate is ample for the purpose.

In pursuance of the judgment of the Court of Appeals a new trial was had. At the second trial the judge directed a verdict for the plaintiff upon the ground that under the principles laid down by the Court of Appeals:—

Assuming that the defendant's condition had been caused by exhaustion in consequence of his efforts to save the ship and the heavy dose of

quinine which he had taken, he was still liable, his act having been such as would be negligent in a sane man.

Judge Ingraham (2 App. Div., N. Y., 185), reviewing the second trial at general term, said :—

This case presents questions about which there has been quite a conflict of judicial opinions. The main question, however, has been settled by the Court of Appeals on a former appeal to that court.

In this connection it is well to notice that three judges dissented from the prevailing opinion of the Appeal Court, viz., Judges Peckham, Gray and O'Brien.

In *Cross vs. Kent* (32 Md., 581), it was said :—

The distinction between the liability of a lunatic or insane person in civil actions for torts committed by him, and in criminal prosecutions, is well defined, and it has always been held, and upon sound reason, that though not punishable criminally, he is liable to a civil action for any tort he may commit.

It was accordingly held that the idiocy, or insanity, of the defendant was not a bar to the action. The action was brought against an insane person for setting fire to a barn belonging to the plaintiff.

There is a great distinction between the cases cited and that of a person setting fire to his own building and seeking afterwards to recover upon fire policies. The distinction is pointed out in the Court of Appeals' opinion above referred to (*Williams vs. Hays*, 143 N. Y., 149), quoting from *Karow vs. The Continental Ins. Co.* (57 Wis., 64), as follows :—

While the burning of his own property by an assured under no restraint of duty and incapable of care, and without any intent or design, does not relieve the company from liability, yet the same act of burning another's property might subject such person to damages therefor, not on the ground of negligence, as that word is usually understood, but, in the language of Chief Justice Gibson, on the principle that where a loss must be borne by one of two innocent persons, it should be borne by him who occasioned it.

Of course, among those whom the court had in mind as being incapable of care and without any design, &c., were insane persons.

In the same opinion, the court, at page 59, say:—

Counsel * * * claims that the burning of the buildings by the assured relieved the company from all liability, regardless of the question whether he was at the time *sane or insane*, and such seems to have been the opinion of the court during a portion of the trial. The question is important and the principal one discussed upon the argument. Counsel on both sides concede their inability to find any adjudicated case directly in point. Upon the part of the plaintiffs it is urged that the case is the same in principle as the liability of a life insurance company, where the insured has committed suicide; and several cases are cited which hold in effect that if the assured was insane at the time of the suicide then the company is liable, otherwise not. On the other hand, it is claimed upon the part of the defense that those cases have no application to fire insurance; that the two classes of contracts are essentially different; that a policy of fire insurance is a contract of indemnity—a contract for compensation for damages actually sustained; whereas a policy of life insurance is a contract to pay a certain sum of money upon the death of a person named, which is sure to happen, and that such payment is to be made regardless of the value or worthlessness of the life insured. Having thus distinguished the two classes of cases, the learned counsel contends that while an insane person cannot be guilty of a crime nor liable for a tort wherein the intent is a necessary ingredient, yet that a lunatic has always been held liable for other torts resulting in damage. In support of this counsel cites several cases, and argues from them that if a lunatic burns the buildings of A. he is liable to A. for the amount of the actual damages sustained; and that since this is so, it must follow that a lunatic cannot burn his own buildings upon which he has previously obtained an insurance, and then turn around and recover of the insurer the damages he has sustained by reason of his own act.

The judge then proceeds to a number of cases bearing upon the principle at great length, and after working out the distinction approved by the New York Court of Appeals, as set forth above, concludes that an insurer is not released from liability because the property was burned by the insured, if the latter, at the time, was insane. But “*it is a maxim*,” he says, “of the insurance law of all commercial actions that the ‘insured cannot recover for loss produced by his own wrongful ‘act.’” He cites also a number of the well-known cases upon life policies in support of his position, among them *Horn vs. Life Ins. Co.*, 7 Jur. (N. S.), 673; *Knickerbocker L. I. Co. vs. Peters*, 42 Md., 414; and *Breasted vs. Farmers’ L. & T. Co.*, 8 N. Y., 306.

Under this head (I.) we will add some general observations. No contract ought to be sustained providing for the payment of money in case of the commission of a crime, or even of an act contrary to public policy, such as is the deliberate taking of life by a sane man. Were the policy to provide that in case the insured should deliberately kill himself, when sane, the insurer would pay a certain sum to his personal representatives, it would hardly be contended that there could be a recovery.

The appellant's contention is that it would not be against public policy to permit a recovery upon a policy of insurance by an innocent assignee, and that, therefore, it cannot be against such policy to permit a recovery for the benefit of the estate of the one who committed suicide whilst of sound mind. The public policy involved is that no covenantee may, by any contract, provide for a profit to himself from a criminal or illegal act to be by him done. In the case of an assignment to, and holding for value by, a third person, the party doing the wrong is not benefited. There is nothing illegal in the taking out by a creditor directly, or by way of assignment, of a policy insuring him against the consequences of the death of a third person, however the same may be occasioned, whether by the act of such person or otherwise. The reason underlying some of the decisions where the rights of innocent third persons have been saved, especially the rights of persons holding for value, does not exist in the case of a policy held by the insured himself.

It is argued by the appellant that the insured receives nothing by reason of his death, inasmuch as the policy does not mature during his lifetime. It might as well be said that a loan returnable with interest to the lender only after his decease, cannot inure to his benefit. The distinction between a contract to be performed for the benefit of a third person and one to be performed for the benefit of the person himself, is a very obvious one.

Men acquire wealth in order that it may pass, at their decease, to relatives or beneficiaries, either through intestacy, or will. They devote their lives to such acquisition, though the benefit of the accumulation will inure only to those who will

take the estate of the accumulator. Money forming part of the estate of a dead man, subject to his will, or passing to his next of kin under the intestate laws, which can only be realized after his decease, cannot be distinguished from any other money belonging to him. All alike must ultimately pass to, and be distributed as, his estate.

The man who, being insured against fire, destroys himself and his property, at the same time, by fire, lays no foundation for a recovery of the fire insurance money, because his estate alone can reap the result.

No distinction can be drawn between a policy expressly insuring only in case of suicide, and one expressly insuring against death from all causes, including death from suicide whilst sane. So far as the contract includes the illegal provision, it must fall. Implied contracts, equally with express contracts, providing for a thing contrary to public policy, are illegal.

This thought is covered by what is said by the Lord Chancellor in Fauntleroy's Case, 2 Dow & Clark, 20:—

Suppose that in the policy this risk had been insured in terms—that in the event of the party effecting the insurance being executed for a capital felony the money should become payable—is it possible that a claim in right of a party effecting such an insurance could be maintained, or that the insurance should not be held void as affording encouragement to crime, and being contrary to public policy? If such a policy could not be sustained where a risk of that kind was mentioned in direct terms and language, how can you give effect to a policy if it in reality involves that condition?

On this short and plain ground we are of opinion that the claim cannot be sustained, and that the judgment of the court below must be reversed.

If it be argued that no man is likely to kill himself for the purpose of securing a distribution to his creditors and to his family, of insurance money, and that therefore permission to recover upon a policy for the benefit of his estate, in the case of such killing, can lead to no ill results, we reply that in the present case, a man of sound mind *did* kill himself, for the very purpose of securing to himself and to his family the amount covered by the present controversy. Runk's letters

show that his purpose, in killing himself, was to enable the insurance moneys to be recovered by his estate.

In the Fauntleroy case it was held that a policy could not be recovered under the following circumstances:—

Fauntleroy effected the policy in January, 1815, and paid the premiums on it up to 1824. On the 29th October, 1824, a commission of bankruptcy was issued against Fauntleroy, who was duly declared bankrupt, and his estate and effects vested in the respondents, as his assignees under the commission. On the 28th October, 1824, Fauntleroy was indicted for felony, and on the 30th of that month he was tried and convicted, and received sentence of death, and was afterwards executed; and the question is whether, under these circumstances, the assignees can recover from the insurance society the amount of the sum insured on Fauntleroy's life; that is, whether—the party effecting the insurance having committed felony, and having been tried, convicted and executed for felony—the parties representing him, and claiming under him and in his right, can maintain the suit. I listened with the utmost attention to the arguments at the bar, as did the noble lord (Radnor) who is now present, and was present at the hearing of the cause, and we have come to the conclusion that the assignees are not entitled to maintain the suit.

It cannot be convincingly contended, that the contract on the part of the insurer, to pay a sum of money in case of self killing by one insured of sound mind, would only be illegal because of the mutual intent of insurer and insured, because it is only from mutual intent that a contract imposing any duty results.

3. The deliberate killing of himself by the insured, if sane, is fraudulent quâ the insurer.

In *Orient Insurance Company vs. Adams*, 123 U. S., 73, adopting the language of Chief Justice Gibson in *American Insurance Company vs. Insly*, it was said:—

Public policy requires no more than that a man be not suffered to insure against his own knavery, which is not to be protected or encouraged by any means.

There is nothing unreasonable, unjust or inconsistent with public policy, in allowing the insured to insure himself against

all losses from any perils not occasioned by his own personal fraud.

Is it possible for the estate of the insured to recover upon a contract with an insurer, requiring the latter to pay a certain sum upon the decease of the insured, where the duty of payment results from deliberate, intelligent self-killing, done for the purpose of bringing about such payment?

The learned trial judge put as analogous, the case of a burning of his premises by one insured against fire. We have endeavored to show, under the last preceding head, the analogy which exists in the decisions, between the two classes of cases. The same learned judge also put as analogous, the murder of the insured by the assignee of a policy. Are not the cases analogous? Though the appellant says they are not, has he sustained his assertion by argument?

In the case of fire insurance, the inability to recover in case of arson by the insured, results only from what is implied, viz., that no fraud upon the insurer will be committed by the insured. A condition of non-destruction by the insured is implied as much in the case of life, as in that of fire, insurance.

The assignee of a policy who murders the insured cannot recover, not by way of punishment of his crime, but because of the fraud which would result if he did recover. The refusal in neither case is because of any forfeiture of property, imposed by the law.

The appellant concedes that if the insured takes out a policy with the intent to commit suicide and subsequently, deliberately commits suicide, whilst sane, there can be no recovery on behalf of his estate. The admission is forced by decisions which cannot be challenged. If, however, it be lawful, as appellant claims, to make a contract looking to the payment to the personal representatives of the insured in case of deliberate, intelligent, suicide, why is it a fraud to make it if, at the time of making, the insured entertains the intent to kill himself? If a man has a right to stipulate for payment to his estate upon a certain condition, the insurer cannot justly complain because of the fact that the insured intends the condition shall happen. If it be a fraud upon the insurer to bring about the happening of the condition, it is

also, we submit, a fraud to enter into a contract with the intent to bring it about; but if, however, the insured does not impliedly agree that he will not deliberately, intelligently, kill himself, he can hardly be held to perpetrate a fraud by entering into a contract intending to do what is within his right under the contract, viz., thereafter to kill himself.

Having thus defined the three reasons, which, in our opinion, sustain our proposition, that there can be no recovery upon a policy by the personal representatives of one who, being insured, kills himself deliberately, whilst sane, we will add some general remarks upon the subject.

Though this contract seemed, upon its face, to be a New York contract, being executed and delivered in that State, and being made performable, both as to payment of premiums and insurance money, in that State, and though there could have been no recovery, unless it had been held to be a Pennsylvania contract, it is now sought, by the appellant, to escape from the law of Pennsylvania upon the subject.

In *Hartman vs. Keystone Insurance Company*, 21 Penna., 466, 479, it is said:—

Besides this, the court was very plainly right in charging that if no such condition had been inserted in the policy, a man who commits suicide is guilty of such a fraud upon the insurers of his life that his representatives cannot recover for that reason alone.

It is true that in *American Life Ins. Co. vs. Isett*, 74 Penna., 176, it was said that this case "does not profess to 'hold that self destruction by the insured, in all cases, avoids 'the policy.'" Though in the Hartman case the remark was general, that the man who committed suicide was guilty of a fraud such as prevented a recovery by his personal representatives, it was meant to apply merely to the case of one who *could* commit a fraud, viz., one who committed suicide deliberately and intelligently, not to one forced to the act by overpowering mental disease.

The late Judge Trunkey, in the *Bank of Oil City* case, referring to a deliberate, intelligent suicide, 6 *Legal Gazette*, 348, said:—

One guilty of suicide who has his life insured, commits a fraud upon the company, and there can be no recovery on the policy whether there be such a condition expressed therein or not.

Whilst there is no decided case applying *in toto*, the proposition for which we contend, there are numerous statements of the law by English judges, of the highest character, and there is no statement to the contrary in any decided case, nor in any text-book writer of any authority.

The English judges have spoken with no uncertain voice. We will refer to some of their sayings.

In *Bolland vs. Disney*, 3 Russell, 351, it is said:—

To avoid the obligation to pay, the act of the party insured, which produced the event, must be done fraudulently for the very purpose of producing the event.

In 30 Law Journal, 511, Vice-Chancellor Wood, referring to the Fauntleroy case, heretofore fully referred to, said:—

So the argument might be pursued—although I do not know that any case has so decided—to the same extent in the case of a person committing suicide while in a sane state of mind, thus committing the felony and losing his life thereby; but I know of no rule of law that can justify me in extending that to a case of a person committing suicide while in a state of insanity, and therefore committing no legal offense.

In *Moore vs. Woolsey*, 4 Ellis & B., 243, Lord Campbell said:—

If a man insures his life for a year and commits suicide within a year, his executors cannot recover on the policy, as the owner of a ship who insures her for a year cannot recover upon the policy if within the year he causes her to be sunk. A stipulation that, in either case, upon such an event, the policy should give a right of action would be void. But where a man insures his own life we can discover no illegality in a stipulation that if the policy should afterwards be assigned *bona fide* for a valuable consideration, or a lien upon it should afterwards be acquired *bona fide* for valuable consideration, it might be enforced for the benefit of others, whatever may be the means by which death is occasioned. No authority has been cited in support of the position that such a condition is illegal, and the frequent introduction of it into life policies indicates the general opinion that it is unobjectionable. The supposed inducement to commit suicide under such circumstances cannot vitiate the condition more than the inducement which the lessor may be supposed to have to commit murder should render invalid a beneficial lease granted for lives. When we are called upon to nullify a contract on the ground of public policy we must take

care that we do not lay down a rule which may interfere with the innocent and useful transactions of mankind. That the condition under discussion may promote evil by leading to suicide is a very remote and improbable contingency, and it may frequently be very beneficial by rendering a life policy a safe security in the hands of an assignee.

In *Jackson vs. Foster*, 5 Jurist (N. S.), 1247, in the Exchequer Chamber, Chief Justice Cockburn said:—

The insurance office insure upon an average calculation of the duration of human life, and they protect themselves from that being abridged by violent means, especially where persons might be induced to abridge it for the purpose of enriching those who come after them. On the other hand, if policies were liable to be avoided in all cases where the death occurred by other than natural causes, one great inducement to persons to insure would be taken away. Therefore a compromise is come to; while the company protect themselves, on the other hand, they add an exception, that if the policy has been *bona fide* assigned to a third person for a valuable consideration, the condition shall not be enforced.

These decisions of the English judges are quoted approvingly not only in Pennsylvania, but also in 71 Alabama, 436, where it was said:—

The certificate is silent as to the consequence, if the member whose life was assured should die by his own hands; and the by-laws of the association, or order, when the certificate was issued, contained no provision declaring in that event an avoidance or forfeiture of the certificate. We are not aware that it has anywhere been expressly decided that voluntary self destruction by one whose life was insured, and of whose sanity there was no question, would avoid the contract of insurance; or rather, would not fall within its risk, though in that event there was not expressed an exception to the liability of the insurer. The authorities generally seem to proceed upon the tacit or expressed concession or admission that such is the law. In *Moore vs. Woolsey*, 4 Ell. & Black, 243, Lord Campbell said: "If a man insures his life for a year, and commits suicide within the year, his executors cannot recover upon the policy; as the owner of a ship who insures her for a year cannot recover upon the policy if within the year he causes her to be sunk; a stipulation that, in either case, upon such an event, the policy should give a right of action, would be void." In *Amicable Ins. Society vs. Bolland*, 2 Dow & Clark, 1 (known as Fauntleroy's case), it was held by the House of Lords, that though there was not in the policy an exception of the liability of the insurer in the

event the assured came to his death by the hands of public justice, the exception would be implied for the reason that an express contract for liability in that event would contravene good morals and sound policy. The inference or implication of the law was, therefore, that the execution of the assured by the hands of public justice, for the commission of crime, is not within the risk of the policy. A construction, or an implication, which will preserve the legality of the contract is preferred to one which will have the opposite effect. Referring to Fauntleroy's case, it was said by Wood, V. C., in *Horn vs. Anglo-Australian and Universal Fam. Life Ins. Co.*, 7 Jurist, N. S., 673: "The argument might be pressed, al- "though I do not know that any case has so decided, to the same "extent in the case of a person committing suicide while in a sane "state of mind, thus committing a felony, and losing his life "thereby." In *Hartman vs. Keystone Ins. Co.*, 21 Penn. St., 466, Black, C. J., said, that though the policy was silent in reference to self destruction, if the accused committed suicide he was "guilty "of such a fraud upon the insurer of his life, that his representa- "tives cannot recover for this reason alone." Hunt, J., however, said of this case, in *Life Ins. Co. vs. Terry*, 15 Wall., 586, that it was in this respect "confessedly unsound." The case in its entirety is not supported by the current of authority. It rules that an exception in the policy, expressed in the words, "should die by his "own hand," must be severed and dissociated from other exceptions expressed in words involving the self criminality of the assured, were to be construed by themselves, and imported "any sort "of suicide," leaving it in doubt whether "suicide" expressed intentional, voluntary or involuntary, accidental self destruction.

A contract of life insurance is simpler in form, in the relative rights and duties of the insurer and the assured, and differs in many respects from marine or from fire insurance; yet, the general principles applicable to marine or fire insurance are applied, so far as consistent with the nature and obligations of the contract, to the contract of life insurance.

Then follows the extract already cited, after which it is said:—

An express contract to pay insurance money to the insured, in the event he committed suicide, an increased premium being paid because of the risk, there could be but little, if any, hesitancy in repudiating as offensive to law and good morals. The fair and just interpretation of a contract of life insurance made with the assured is, that the risk is of death proceeding from other causes than the voluntary act of the assured, producing, or intended to produce it; and especially of a contract made by an association or organization, with one of its members, the objects and purposes of which

is that the members will contribute to and bear each other's losses, or the losses of those dependent upon them. The extinction of life by disease, or by accident, not suicide, voluntary and intentional by the assured, while in his senses, is the risk intended; and it is not intended that, without the hazard of loss, the assured may safely commit crime. Bliss on Life Ins., section 242-3.

In *Armstrong vs. Mutual Life Ins. Co.*, 117 U. S., 591, as we have heretofore shown, Mr. Justice Field said:—

It would be a reproach to the jurisprudence of the country if one could recover insurance money payable on the death of a party whose life he had feloniously taken. As well might he recover insurance money upon a building that he had willfully fired.

May we not say that it would be equally a reproach to the jurisprudence, if a contract could be made, and could be recovered upon, providing that in case of deliberate, intelligent self killing, the estate of the insured should derive any benefit therefrom?

In the last book upon Insurance, Mr. Biddle, section 830, says:—

It may be that a contract of insurance would be avoided where the insured commits intentional self destruction or suicide, and while it will be difficult to find any case deciding that it does, there are undoubtedly *dicta* to that effect.

The appellant urges that there is a *dictum* of Mr. Justice Hunt which should govern this case, to be found in *Life Ins. Co. vs. Terry*, 15 Wallace, 580. It is in these words:—

In *Hartman vs. Keystone Insurance Company* the doctrine of *Borradaile vs. Hunter* was adopted, with the confessedly unsound addition that suicide would avoid a policy, although there were no condition to that effect in the policy.

In that case this court found it necessary to decide a point concerning which there had been a great conflict of authority, the English cases, beginning with *Borradaile vs. Hunter*, having decided in a way which it found itself unable to follow. In England it had been held, under a policy providing that there could be no recovery in case of self destruction, that there was no liability in case of destruction by a man who deliberately killed himself with the intent to kill, even though

he might not be of sound mind. It became necessary to review the authorities, and, in the course of a long list of citations, the case of *Hartman vs. Insurance Company* was mentioned. The question to be decided by the judge who wrote the opinion was whether, if the policy provided against liability in case of suicide, a killing by a man of unsound mind was contemplated. It was in this connection he said of the Hartman case that it adopted the Borradaile case, which had held the insurance company under a certain clause exempt whether the insured was sound or unsound, with the confessedly "unsound addition" that the suicide would avoid the policy even though there was no condition to that effect. He was not considering the case of suicide by a man of sound mind, but one of suicide by a man of unsound mind, and in connection only with this, did he deal with the Hartman case. He thought the latter unsound, if it held that in the latter case there could be a recovery, though there was no clause saving suicide in the policy itself. The question of liability to the personal representatives of a man of sound mind, in case of suicide, was not considered by this court in that case, nor in any way contemplated by the learned judge who delivered the opinion.

In referring to *Moore vs. Woolsey*, Bliss says (section 248):—

This shows Lord Campbell's opinion, that self destruction by a sane man avoids the policy, whether there is a clause to that effect or not. * * * And such is the admission, tacit or expressed, of nearly all the cases referred to.

In the above-cited case of *Moore vs. Woolsey* the right to stipulate in favor of an assignee, whatever the cause of death may be, is recognized in these words:—

But where a man insures his own life, we can discover no illegality in a stipulation that, if the policy should afterwards be assigned *bona fide* for a valuable consideration, or a lien upon it should afterwards be acquired *bona fide* for valuable consideration, it might be enforced for the benefit of others, whatever may be the means of death.

The words "*bona fide*" are peculiarly significant in a case where the act of taking out the policies, and of assigning

them for a previously existing indebtedness, is continuous, and part of the same design to defraud the insurer. And of course the making of the policy payable to a third person would not come within Lord Campbell's reservation.

In *Jones vs. Con. Inv. Ass. Co.* (26 Beav., 256) the assignee was protected by an express condition in the policy. One of the conditions indorsed thereon was, that "the policy of "a person assuring his own life will become void if he dies by "his own hand or by the hand of justice," &c.; "but should "such policies have been assigned to other parties, for a valuable consideration, six calendar months before the death of "the assured, they remain in force, to the extent of the beneficial interest therein of the parties to whom they shall have "been so assigned."

In *Cook vs. Black* (1 Hare, 393) the Vice-Chancellor (Wigram) said that the meaning of such a condition is—

That the assured shall have the power of assigning the policy so effectually that a person advancing money upon it shall retain his security unimpaired, notwithstanding the assured might commit suicide; and by this condition the policy is rendered more valuable as a negotiable security.

In both the above cases the policy was assigned as security for advances actually made and to be made. As the Master of the Rolls said in the *Jones* case (page 259):—

It was given to a person with whom the assured intended to have dealings as a security for the balance of the transactions.

In these cases the *bona fides* of the transactions were in question. Such also was the case in *The Solicitors and Gen. Life Ins. Co. vs. Lamb*, 10 Jur. (N. S.), 739; and in *White vs. B. E. Life Ass'n, L. R.*, 7 Eq., 394.

In support of the contention of the appellee we cite some time-honored, familiar maxims of the law.

"Salus populi suprema lex." It would be a gross violation of this rule, founded on public policy, to hold that a perfectly sane person may eradicate from the business of life insurance its underlying principle, that the time of one's death is uncertain. It would be a glaring inducement to others to defraud insurance companies; and it would encourage suicide, which public policy condemns.

"Ex dolo malo non oritur actio." Broom's Legal Maxims, 7 Ed., 731-739, says that *dolus malus* includes:—

Every kind of craft, guile or machination, intentionally employed for the purpose of deception, cheating or circumvention. * * * "The principle of public policy," says Lord Mansfield in Holman *vs.* Johnson, Cowp., 343, "is this: *ex dolo malo non oritur actio*. No court will lend its aid to a man who founds his cause of action "upon an immoral or an illegal act."

In Pearce *vs.* Brooks, L. R., 1 Ex., 213, 218, it is said:—

Nor can any distinction be made between an immoral and an illegal purpose; the rule which is applicable to the matter is, *ex turpi causa non oritur actio*, and whether it is an immoral or an illegal purpose in which the plaintiff has participated, it comes equally within the terms of that maxim and the effect is the same; no cause of action can arise out of either one or the other.

See also Cowan *vs.* Milburn, L. R., 2 Ex., 230.

"Nemo ex suo delicto meliorem condicinem suam facere potest." Broom (224-5) says:—

If a husband, on his wife's death, was entitled to her fortune, he could not take the benefit of it if he murdered her.

No man shall be heard to allege his own turpitude. (Powell *vs.* Waters, 8 Cow., 669; Underhill *vs.* Van Cortlandt, 2 Johns. Ch., 339, 350.)

No man shall take advantage of his own wrong. (Hard *vs.* Seeley, 47 Barb., 428.)

He that doeth iniquity shall not have equity. (Church of Holy Innocents *vs.* Keech, 5 Bosw., 691-695.)

"Nemo allegans turpitudem suam audiendus." (Baker *vs.* Arnold, 1 Caine, 258, 269; Winton *vs.* Saidler, 3 Johns. Cas., 185.)

The law judges a man's previous intentions by his subsequent acts. (Dumont *vs.* Smith, 4 Denio, 319, 320.)

The law would rather tolerate a private loss than a public evil. (Dry Dock R. R. Co. *vs.* Mayor, &c., of New York, 55 Barb., 298-308.)

The wrongdoer shall never be heard in court to claim that his felony or other wrong gives him any advantage as a defense. (Newton *vs.* Porter, 5 Lans., 416.)

"Nemo potest mutare consilium suum in alterius injuriam."

"This," says Phillimore (Principles and Maxims of Jurisprudence, page 31), "is a rule of natural equity in eliciting 'the doctrines of which there never has been a greater master than Papinian.' 'By the exercise of our will we alter the position of others, and thus confer upon them rights which 'a change of purpose would destroy.'

If Mr. Runk's purpose, when he effected the policies, was an honest one, he could not afterwards change it to the detriment of the defendant.

"Nemo plus juris ad alium transferre potest quam ipse haberet." "This principle is taken from the law which regulates the succession to the estates of intestates; and in conformity thereto, if any one died before the succession of an intestate came to him, as he had acquired no right in it, so "he transmitted none to his heirs."

The rule is extended by analogy to other means of acquisition, and another maxim is evolved from it: "That I have "no claim to a better condition than he from whom I derive "my rights." (*Id.*, 89-91.)

"Quod quis ex culpa sua damnum sentit non intelligitur "damnum sentire." "Actus Dei nemini facit injuriam."

"The act of God signifies, in legal phraseology, any inevitable "accident occurring without the intervention of man, and may "indeed be considered to mean something in opposition to the "act of man." (Broom's Legal Maxims, page 230, and cases cited.)

It was the act of God, and not of the insured, which was contemplated as the event upon which the policy in the Runk case should become payable.

In Ehrenberg's Law of Insurance (vol. I., page 420, section 35), under the head of "Obligations of the Insurer," it is said:—

If the insured has himself intentionally called into life the circumstance by which the damage was caused or not prevented it, if it was in his power, there is as a general rule no obligation to pay on the part of the insurer, but there are matters, like the marriage of a daughter or the attaining of a ripe old age, which the insured may try to promote without jeopardizing his claim to insurance. Where the insurance is exclusively for the benefit of third parties, a claim is often recognized in favor of such third parties (for instance, in the

case of life insurance notwithstanding the suicide of the insured). But on grounds of public policy such a claim can be recognized only when it does not create a dangerous stimulus to call into existence the facts which cause the damage.

In the case of *The Gresham vs. Rau & Memminger*, Decisions of the Supreme Court of Commerce, VIII., page 304, *Entscheidungen des Reichs-Oberhandels gerichts Stuttgart* (1879), the insured, a merchant at the time the insurance was closed, had joined the army as a sutler and was killed. The court held that the case was not covered by the express exemption clause of the policy and that there was no general principle which exempts the company from paying, even in the absence of an express clause, for every increase of risk caused by the act of the insured. In this connection the court says (page 308):—

This is not a case where the insured caused his death by his own act or negligence, as the act of joining the army as a sutler cannot be considered as either fraudulent or negligent.

In *Dernberg, Prussian Private Law*, II., page 698, it is said:—

It is in harmony with the general principle of insurance law that the insurance ends when the insured risks his life voluntarily, for instance, by a duel, or where he loses it by crime or ends it by suicide, provided that it cannot be proved that such act was done when he was not responsible.

In *Journal du Droit International Privé* (1896), page 196, commenting on an Austrian decision holding that the burden of proof that the death was caused by a suicide is on the company, in the absence of a provision to the contrary, it is said:—

It is admitted that even without a formal clause to that effect in the policy, the insurer is not bound to pay the insurance money to the representatives of the deceased or the beneficiaries, if the death of the insured is the result of suicide, for it is a principle of law that an unlawful act of the insured discharges the insurer.

In the Spanish Code of Commerce, section 423, it is said:—

Insurance payable in case of death does not cover the decease in the following cases:—

1. If the insured dies in a duel or from the results of such duel.
2. If he commits suicide.
3. If he suffers capital punishment for a felony known to the common law.

In a charge by Judge Lowrie in *Stratton vs. North American Mutual Co.*, 7 Legal Gazette, 313 (Philadelphia, October 1st, 1875), he says:—

Surely we all know the meaning of the expression "died by his "own hand," and surely common sense says that a man who gets his life insured is not insured for his own benefit against his own intentional act of self destruction, however it might be if another should have it insured or if he should have it insured for the benefit of another. And surely the common law puts this interpretation on other contracts when it says that no man shall take any profit out of his own wrongful act, and that a policy on a house or ship is forfeited when the loss is caused by the wrongful and intentional act of the insured. And, with this expression in the policy, it is plain that, if Stratton committed suicide knowing and intending the physical effect and the result of the act by which he died, the policy is forfeited and void, and the plaintiff cannot recover.

Before concluding our discussion under this head we will further refer to the authorities cited by the appellant. All of these rest on the case of *Fitch vs. Life Insurance Company*, 59 N. Y., 573, where it was said:—

The policy contained no stipulation that it should be void in case of the death of the insured by suicide. It was not taken out for the benefit of Fitch, but of his wife and children. Although they were bound by his representations, and any fraud he may have committed in taking out the policy, the policy having been obtained through his agency, yet they were not bound by any acts or declarations done or made by him after the issue of the policy, unless such acts were in violation of some condition of the policy. We have examined the various grounds upon which the defendant claims that this evidence was admissible, but are of opinion that they are not sufficient.

It is thus seen that the Fitch case, which is the basis of plaintiff's argument, is no authority whatever for his views.

In *Patrick vs. Excelsior Co.*, 67 Barb., 202 (1875), the policy was for the sole benefit of the wife. The court said the Fitch case had "settled the doctrine that in the case of "a policy for the benefit of the wife, the suicide of the insured is not a defense, where there is no stipulation to that "effect in the policy."

In *Kerr vs. Minnesota Co.*, 39 Minn., 174, the policy was for the benefit of the wife. It was said:—

In the law of insurance, suicide is not, as a rule, recognized as a ground of exemption from liability, or for forfeiture of a policy issued for the benefit of a third person, unless it is expressly so provided in the policy.

This case refers, as authority, to *Mills vs. Rebstock*, 29 Minn., 382, which simply refers to the Fitch case. Third parties were beneficiaries.

The case of *Meacham vs. Assn.*, 120 N. Y., 237, is of no importance. It simply refers to the Darrow case, *infra*.

In *Eastabrook vs. Union Mutual*, 54 Maine, 228, the court said:—

The different English life insurance companies (where unwilling to incur the risk of *suicidal insanity*) have guarded against such risk by language clearly excluding it from the policy.

If *Hartman vs. Insurance Company* be intended to mean that suicide will avoid a policy in the abstract without reference to the assured's sanity or insanity, at the time of doing of the act, then it goes beyond defendant's contention, which adds the element of sanity on the part of the suicide, and does not deal with any third person's right, but only with that of the personal representatives of the suicide's estate. The soundness of the proposition thus qualified is recognized in unmistakable terms in *Life Insurance Company vs. Terry*, 15 Wallace, 586. The learned justice, disapproving not only of the Hartman case but of *Borradaile vs. Hunter*, 5 M. & G., 639, said:—

These decisions expressly exclude the question of mental soundness. They are in hostility to the test of liability or responsibility adopted by the English courts in other cases from Coke and Hale onwards.

Again at page 588:—

The propositions embodied in the charge before us * * * rest upon the same basis—the moral and intellectual incapacity of the deceased. In each case the physical act of self destruction was that of George Terry. In neither was it truly his act. In the one supposition he did it when his reasoning powers were overthrown

and he had not power nor capacity to exercise them upon the act he was about to do. It was in effect as if his intellect and reason were blotted out or had never existed. In the other, if he understood and appreciated the effect of his act, an uncontrollable impulse caused by insanity compelled its commission. He had not the power to refrain from its commission, or to resist the impulse.

At page 590, the learned justice said:—

That form of insanity called impulsive insanity, by which a person is irresistibly impelled to the commission of an act, is recognized by writers on this subject. It is sometimes accompanied by delusions, and sometimes exists without them. * * * The cases are to be carefully distinguished from those where persons in the possession of their reasoning faculties are impelled by passion merely in the same direction. * * *

We hold the rule on the question before us to be this: If the assured, being in the possession of his ordinary reasoning faculties, from anger, pride, jealousy or a desire to escape from the ills of life, intentionally takes his own life, the proviso attaches and there can be no recovery. If the death is caused by the voluntary act of the assured, he knowing and intending that his death shall be the result of his act, but when his reasoning faculties are so far impaired that he is not able to understand the moral character, the general nature, consequences and effect of the act he is about to commit, or when he is impelled thereto by an insane impulse, which he has not the power to resist, such death is not within the contemplation of the parties to the contract and the insurer is liable.

It will be observed that throughout the Terry opinion, the circumstance that the clause against suicide existed in the policy, is entirely lost sight of as a controlling feature, and the whole opinion turns upon the moral sanity, or insanity, of the assured, at the time of his suicide.

What appellant says with reference to the learned judge's language in the Hartman case, being predicated of circumstances indicating a purpose to commit suicide, formed prior to the contract, would have more weight but for the fact that the language referred to the sufficiency of the suicide clause only, apart from any and all other circumstances of the case; holding that whether the clause did or did not cover suicide committed as the assured had committed it, was immaterial, for the reason that such a clause was unnecessary. "A man," said the learned justice, "who commits suicide is guilty of such

"a fraud upon the insurers of his life that his representatives cannot recover for that reason alone."

As the opinions of men, when expressed generally and not applied to specific cases, are based upon the usual order and conditions of things, the presumption is that the learned justice had reference to a normal man, of sound mind, responsible for his acts, not to a man whose mental condition was abnormal. That this was his meaning is manifest from his characterization of suicide as "a fraud." An insane man cannot be deemed responsible for fraud.

We fail to see how the case of *American Life Ins. Co. vs. Isett's Admr's* (74 Pa. St., 167), limits, or in any sense disapproves of, the Hartman case, as appellant intimates. It holds, merely, that, notwithstanding the condition in the policy that it should be void if the insured should "die by his own hand," the plaintiff might recover if the insured was insane when he committed the act. In the absence of a provision against suicide, whether sane or insane," the decision was well founded.

In the Hartman case the question to be considered was whether on the true construction, to be determined by rules of punctuation, of a clause that in case the assured should "die "by his own hand, in, or in consequence of a duel," death from poison administered by himself would annul the policy. The court held it would, because otherwise, the clause would be meaningless, and then proceeded to point out that, apart from the clause, the policy was void for the reason that committing suicide was an act of fraud upon the company. As the learned judge very truly says, in *American Life Co. vs. Isett's Admr's*, the Hartman case "does not profess to "hold that self destruction by the insured in all cases avoids "the policy," for it refers only to self destruction by such as could be held responsible for fraud.

Aetna Ins. Co. vs. Florida (32 U. S. App., 753) is cited by appellant, for a purpose not very clear, unless it be to show that the court recognized or recalled but one ground of fraud as existing prior to the Missouri statute (which was the subject of consideration) available to insurance companies as a defense, namely, "that the assured had taken out the pol-

"icy with the preconceived intent of thereafter committing suicide and that such purpose was subsequently executed," and that it was the object and intention of the legislature to preserve this single ground, and not, as was contended, to create a new defense. But the plaintiff's counsel, after quoting at length from the opinion to prove his theory, stopped short of the very language that disproves it, as follows: "It "must be borne in mind that the general purpose of the statute was to curtail the rights of insurance companies rather "than enlarge them." From this it is clear that the court, as well as the legislature, recognized as possible that suicide might afford and did afford, prior to the statute, effective defenses, even though it was not contemplated when the policy was taken out. It was to prevent such defenses that the statute was passed.

Darrow vs. Family Fund Society (116 N. Y., 537) has no great bearing upon the present case. This cannot be shown more clearly than by quoting from the opinion at page 542:—

The provision relied upon to support the defense so alleged, is the provision in the contract that it should be void if the member herein shall die in consequence of a duel, or by the hands of justice, or in violation of or attempt to violate any criminal law of the United States or of any State or country in which the member herein named may be. The death of Darrow was in this State. At common law suicide was a crime. * * * It is not a crime in this State. The attempt to commit suicide is made a crime by the statute. * * * By the act of taking his own life he (the assured) violated no criminal law. * * *

It is true that in the case cited "it was alleged as a defense, "and the defendant offered to prove on the trial, that the "member, Darrow, died from the effects of poison taken by "him and which was administered by himself with intent to "take his own life." It is also true that the exclusion of this testimony was sustained by the New York Court of Appeals upon the ground that "suicide was no defense unless it came "within some condition of the contract of insurance relieving "the defendant from liability in such case," citing *Fitch vs. A. P. L. Ins. Co.* (59 N. Y., 557). In the case cited, as in that which the court was considering, the policy contained

no stipulation that it should be void in case of the death of the insured by suicide. In both cases the policy was taken out for the benefit, not of insured's estate, but expressly for the benefit of a third person, namely, his wife in one case, and wife and children in the other. Herein lies the distinction between the present case and the case relied upon by counsel.

Of course if the policy had been taken out in favor of his estate, his estate would have been bound by his acts and declarations, whether before or after the policy was effected.

What has been said with reference to the case of *Darrow vs. Family Fund Society* applies so far as the cases are alike to *Meachem vs. The Association* (120 N. Y., 237), and nothing need be added.

Kerr vs. Minnesota Mutual Benefit (39 Minn., page 175) upholds the decision in the *Darrow* case in the language already quoted.

In *Mills vs. Rebstock* (29 Minn. App., 383) it is said:—

"In the case of a policy of life insurance issued for the benefit of the heirs of the person insured, it is well settled that the 'fact of his death by suicide, unless otherwise expressly stipulated, is no defense,' and the case of *Fitch vs. The American P. L. Ins. Co.* (59 N. Y., 557), considered above, is cited as an authority. It is to be observed that the words 'issued for the benefit of the heirs' are used in the quotation. The word 'heirs,' as will be seen by reference to the head note in the case, is not intended to indicate, as, of course, it does not mean, the person to whom the policy would naturally descend; in other words, it does not intend 'personal representatives' as next of kin.

To quote the head note:—

"Suicide is no defense to an action or a policy issued for the 'benefit of a third person.' Moreover, *Fitch vs. American P. L. Ins. Co.*, cited as an authority, would support no other construction.

Northwest Assn. vs. Warner (24 Ill. App. Ct. Rep., 357) holds, as appellant says, and nothing more, viz., that an insurance company cannot, by a by-law, forfeit any of the rights of the assured under a policy already issued before its contract.

The quotation from Cook on Life Insurance (page 41) does not refer to a case like the present, in which the policy was for the benefit of the insured's estate, and the insured was sane when he committed suicide. It states general principles to which all assent.

In his charge to the jury Judge Butler expressed the view (Record, page 140) that—

Every contract of life insurance contains an implied contract that the insured would not intentionally terminate his life, but that the insurer shall have the benefit of the chances of its continuance until terminated in the natural, ordinary course of events. It is on these chances that the premium is calculated and based and the contract is founded.

Counsel emphasizes the last sentence and suggests that the court erred in expressing the opinion, as it was based on no evidence presented at the trial, as to how mortality tables are prepared. Manifestly the remark had no reference to mortality tables, but was thrown out as something that the jury as ordinarily intelligent men would take notice of—something self-evident, viz., that men will seek to protect rather than to destroy their own lives, and that the defendant took its chances upon that probability.

Of course suicide, as a possible and probable cause of death, is to be considered in preparing mortality tables. To sustain this it is unnecessary to cite authorities. But that the great bulk of humanity cherishes life as sacred, as a thing to be protected against every possibility of danger, is a circumstance by itself which controls not life insurance alone, but every other enterprise. It controlled and doubtless gave the greatest impulse to the growth and advancement of the business before mortality tables were heard of. It seems, therefore, unnecessary to consider further the cases cited by counsel with the object indicated. We concede that the general tables of mortality include suicide.

The appellant contends that "the true question always is, 'was the act committed with a felonious intent?'" Suppose a case, he says, in which the creditor is the sheriff and the debtor sentenced to be hanged; or one in which the creditor takes his debtor's life in battle against a foreign foe. The

answer is, that in both supposed cases the creditor acts as the instrument of the State; in the one case, to execute the law, in the other, to protect the government.

The appellant says:—

In the absence of a statute declaring what is public policy, or of a condition in a contract limiting its operation, it is not the function of the court to declare contracts void because of supposed public policy.

Whether this be a true proposition, or whether it be sustained by the very lengthy quotation from the cases relied upon, is extremely doubtful. Carpenter's Estate (170 Penn. St., 203) is, in no aspect, applicable either in support of the plaintiff's cause or of the proposition; nor is *Fitch vs. Insurance Co.* (59 N. Y., 557).

In *Moore vs. Woolsey* (4 Ellis & B., 243) it was held simply that it is not illegal to stipulate that "if the policy should afterwards be assigned *bona fide* for a valuable consideration, or a lien upon it should afterwards be acquired *bona fide* for valuable consideration, it might be enforced for the benefit of others, whatever may be the means by which death is occasioned."

Jones vs. Consolidated Investment Ass. Co. (26 Beav., 256) decides the same thing in principle, holding that under a policy, which contained a similar condition and exception, a letter charging it with a particular debt contracted three years prior to the death of the assured by his own hand, was enforceable.

White vs. British Empire Life Ass. Co. (L. R., 7 Eq., 394) decides that a policy containing a condition against suicide and an exception, as in the last two cases, in favor of third persons acquiring an interest, is valid, as to such interest, as a security, even though the holder of the security is the insuring company, and though the insured's debt, consisting of an advance by the company, is thereby discharged. Of course, the effect of such a decision is to benefit the insured's estate; but he was entitled to the benefit of every provision of the policy up to the moment of defrauding the company by committing suicide or until the policy became void by his

so doing; and among the benefits to which he was entitled was the present right to deposit the policy as security for an advance. Having acted upon that right, by obtaining the loan and making the deposit, he, as well as the lender, became mutually affected as parties to an executed contract, to be considered separately and apart from the policy as a whole. Up to the moment of affecting the security by depositing the policy no fraud had been committed. It was the subsequent suicide that constituted the fraud and rendered the policy void. As was said by Sir R. Malins, V. C., in the case cited, adopting the language of another case:—

The object of the condition is to increase the value of the policy to the holder, *i. e.*, in the first place, to the assured. And if that be so, I do not see how I can hold that in the absence of fraud the estate of the assured is to be deprived of the benefit intended to be given to him by the exception, merely because the mortgagee happens to be fully secured. * * * This condition, then, being for the benefit of the assured, and it being admitted that if he had deposited it for value with an indifferent person, it would have been valid to the amount of such interest, why should the assured be in a less favorable position because the assurance company have themselves advanced him money and taken it as a security?

The appellant says:—

These cases show that there is no public policy recognized by the courts of England or America which prevents relatives and creditors of a suicide, and even the estate of a suicide, from receiving the proceeds or benefit of a life policy which becomes, by its terms, payable on the death of a man who in fact dies by his own hand.

What they really show is, that rights and interests which have become vested through the operation of the separable provisions of the policy cannot be impaired or affected by the subsequent suicide of the assured; but that when the interests of third parties are not involved, as when the assured retains control of the disposition of the policy or its proceeds until his decease, which he brings about by his own hand, consciously, and with a deliberate and intelligent design of securing to his estate the benefits of the policy in a way which, if not expressly, was certainly impliedly, excluded from the contract, he is guilty of a fraud which operates as a complete defense.

Kelly vs. Mutual Life Ins. Co. (75 Fed. Rep., 637) is cited to show that

The general practice of the defendant company also shows that it does not regard suicide by itself as a reason for avoiding the policy on the grounds of public policy.

Jackson vs. Foster (5 Jurist (N. S.), 547) simply holds that an assignee is bankruptcy is not within the provision of a policy which protects the vested rights of third parties acquired by assignment or otherwise. An assignee in bankruptcy is not a purchaser for value. He takes nothing more than the interests of the assignor, under the assignment. He is the representative of the insured's estate.

Knights Templar and Mason's Life Indemnity Co. vs. Berry (50 Fed., 511) and *Aetna Ins. Co. vs. Florida* (32 U. S. App., 753) the Missouri statute is considered, which provides that "even if the clause be written in," quoting from counsel's brief, "the fact of suicide is no defense unless the party contemplated suicide in applying for the policy." They merely show that the Missouri statute has been the subject of judicial consideration.

The Missouri statute and the Pennsylvania Constitution are referred to as showing generally that suicide is not in its character felonious in the opinion of the lawmakers. That may have been the opinion of the majority of the legislature in Missouri when the Act was passed, and possibly of the electors of Pennsylvania at the adoption of the Constitution, *but it has nothing to do with this case.*

Terry vs. Ins. Co., 15 Wall., 580, already considered, is again referred to as authority for the proposition that whether the insurance was effected by the insured or some one else, as, for instance, by the insured's wife, is immaterial. In the case before the court it certainly was immaterial, the sole question there being as to the sanity or insanity of the insured.

Appellant quotes at length from Biddle on Insurance (Brief, pages 28, 29), matter which, in this case, is without value, saving the following:—

It may be that a contract of insurance would be avoided when the insured commits intentional self destruction or suicide, and

while it will be difficult to find any case deciding that it does, there are undoubtedly *dicta* to that effect. Citing *Moore vs. Woolsey*, 4 E. & B., 243; *Horn vs. Anglo-Aus. Ins. Co.*, 30 L. J. Ch., 511; *Sup. Com. vs. Ainsworth*, 71 Ala., 436; *Jarvis vs. Ins. Co.*, 5 Ins. L. J., 507. "It has indeed been held that the suicide of the insured will not "avoid a policy in the absence of a clause against suicide taken "out for the benefit of some one else, as a wife, child, &c. When, "however, a policy is taken with the fraudulent intent to take "one's life, a suicide will obviously." Citing *Fitch vs. Ins. Co.*, 59 N. Y., 577; *Patrick vs. Ins. Co.*, 67 Barb., 202; *Mills vs. Rebstick*, 29 Minn., 380; *Kerr vs. Mut. Ben. Ass'n*, 39 Minn., 174; *Smith vs. Ben. Soc'y*, 51 Hun., 575.

Other authors, Bliss, Bunyon and Bacon, are quoted at length, though they are really hostile to the appellant's position.

Estabrooke vs. Union L. I. Co. (54 Maine, 224); *Borradaile vs. Hunter* (5 M. & G., 633); *Dean vs. American L. I. Co.* (4 Allen, 96); and *Nimick vs. Mutual Ben. Assn.* (1 Bigelow, 689), are quoted to show that while the constructions placed by the courts upon the clause making policies void in case of suicide are "very diverse, there is a remarkable unanimity in these opinions in stating the reason of the rule "in a manner which strongly supports the contention of the "plaintiff in error." If the appellant means that the process of reasoning on the part of various courts and judges produces diverse results, we can only say that no construction or *dicta* used in arriving at particular conclusions, are unfavorable to the appellee's position.

II. Insanity was correctly defined by the learned trial judge.

The appellant boldly asserts that the charge of the learned trial judge, in which he defined mental unsoundness, was not in accordance with the decisions of this court. Though he quotes from the charge and from the decisions at length, he contented himself with the mere assertion that there is a difference. He does not demonstrate its existence. After a very careful comparison of what has been said by this court in the decisions from which he cites, with what was said by the learned trial judge, we fail to see the difference claimed to exist.

The learned trial judge said (Record, page 139):—

If one whose life is insured intentionally kills himself when his reasoning faculties are so far impaired by insanity that he is unable to understand the moral character of his act, even if he does understand its physical nature, consequence and effect, such self destruction will not of itself prevent recovery upon the policies. * * * We must understand what is meant and intended by the term "moral character of his act." It is a term which has been used by the courts and is correctly inserted in the point; but it is a term which might be misunderstood. We are not to enter the domain of metaphysics in determining what constitutes insanity, so far as the subject is involved in this case. If Mr. Runk understood what he was doing, and the consequences of his act or acts to himself as well as to others; in others words, if he understood, as a man of sound mind would, the consequences to follow from his contemplated suicide, to himself, his character, his family and others, and was able to comprehend the wrongfulness of what he was about to do, as a sane man would, then he is to be regarded by you as sane. Otherwise he is not.

He added:—

I therefore charge you that if he was in a sane condition of mind at the time, as I have described, able to understand the moral character and consequences of his act, his suicide is a defense to this suit.

He had been requested by the appellant to charge:—

If one, whose life is insured, intentionally kills himself when his reasoning faculties are so far impaired by insanity that he is unable to understand the moral character of his act, even if he does understand its physical nature, consequence and effect, such self destruction will not of itself prevent recovery upon the policy.

He affirmed this point; but deemed it necessary that the jury should be instructed concerning the meaning of the expression "the moral character of his act." Counsel for the appellant and the court were in accord concerning what constituted irresponsible insanity. The error, therefore, which the appellant attributes to the learned trial judge is, that he failed properly to define the "moral character of his act."

The brief of the appellant is silent in expressing in what respect the charge is thought to be erroneous, whether too broad or too limited. Though long extracts from decisions,

sometimes more, but usually less, applicable are made, there is no attempt to show wherein what is said in the course of such decisions differs from what was said in this case. This court is left to discover in what, if there be a difference, it consists.

The appellant says that in the opinion of Mr. Justice Hunt, in *Life Insurance Company vs. Terry*, 15 Wallace, 580, is to be found "the true statement of the rule upon this subject." The definition of responsible insanity given by Mr. Justice Hunt is as follows (page 590):—

If the assured, being in the possession of his ordinary reasoning faculties, from anger, pride, jealousy or a desire to escape from the ills of life, intentionally takes his own life, the proviso attaches and there can be no recovery.

The requirement, as stated by Mr. Justice Hunt, was that the assured should be "in possession of his ordinary reasoning faculties." The requirement as stated by Judge Butler was, that the assured must understand, "as a man of sound mind would, the consequences to follow to himself, his character, his family and others, and was able to comprehend the wrongfulness of what he was about to do as a sane man would."

In indicating particular motives or impulses, such as "anger, pride, jealousy or a desire to escape from the ills of life," Mr. Justice Hunt of course did not intimate that these were the only motives reconcilable with sanity. He gave such illustrations as occurred to him, without meaning to exclude others.

He affirmed the following charge of Mr. Justice Miller (page 582):—

If you (the jury) believe from the evidence that the decedent, although excited or angry, or distressed in mind, formed the determination to take his own life because in the exercise of his usual reasoning faculties he preferred death to life, then the company is not liable, because he died from his own hand within the meaning of the policy.

Other courts had held a man to be mentally sound, within the meaning of a life insurance policy, if he had deliberately

killed himself, or had done what he knew would result in his death, with the intent to end his life. This court, however, held that a man was not sane though he did not know what he was doing and meant to do it, if he was mentally unable to discriminate between right and wrong in his perception of the consequences of his act. We concede that a man is not of sound mind "who is not able to understand the moral character and consequences of his act." The learned trial judge so charged.

Let us consider the cases so confidently appealed to by the appellant. Mr. Justice Miller, in the Terry case (15 Wallace, 582), had charged:—

The act of self destruction must have been the consequence of insanity, and the mind of the decedent must have been so far deranged as to have made him incapable of using a rational judgment in regard to the act which he was committing. If he was impelled to the act by an insane impulse which the reason that was left him did not enable him to resist, or if his reasoning powers were so far overthrown by his mental condition that he could not exercise his reasoning faculties on the act he was about to do, the company is liable.

In affirming this charge, Mr. Justice Hunt said (page 583):—

The request for instructions made by the counsel of the insurance company proceeds upon the theory that if the deceased had sufficient mental capacity to understand the nature and consequences of his act, that is, that he was about to take poison, and that his death would be the result, he was responsible for his conduct, and the defendant is not liable; and the fact that his sense of moral responsibility was impaired by insanity does not affect the case. The charge proceeds upon the theory that a higher degree of mental and moral power must exist; and although the deceased had the capacity to know that he was about to take poison, and that his death would be the result, yet, if his reasoning powers were so far gone that he could not exercise them on the act he was about to commit, its nature and effect, or if he was impelled by an insane impulse which his impaired capacity did not enable him to resist, he was not responsible for his conduct, and the defendant is liable. * * * The propositions embodied in the charge before us are in some respects different from each other, but in principle they are identical. They rest upon the same basic—the moral and

intellectual incapacity of the deceased. In each case the physical act of self destruction was that of George Terry. In neither was it truly his act. In the one supposition he did it when his reasoning powers were overthrown and he had not power or capacity to exercise them upon the act he was about to do. It was in effect as if his intellect and reason were blotted out or had never existed. In the other, if he understood and appreciated the effect of his act, an uncontrollable impulse caused by insanity compelled its commission. He had not the power to refrain from its commission, or to resist the impulse. Each of the principles put forth by the judge rests upon the same basis—that the act was not the voluntary, intelligent act of the deceased.

He further said:—

When we speak of the "mental" condition of a person we refer to his senses, his perceptions, his consciousness, his ideas. If his mental condition is perfect, his will, his memory, his understanding are perfect, and connecting with a healthy bodily organization. If these do not concur his mental condition is diseased or defective.

He concluded:—

If the death is caused by the voluntary act of the assured, he knowing and intending that his death shall be the result of his act, but when his reasoning faculties are so far impaired that he is not able to understand the moral character, the general nature, consequences, and effect of the act he is about to commit, or when he is impelled thereto by an insane impulse which he has not the power to resist, such death is not within the contemplation of the parties to the contract, and the insurer is liable.

In the Rodel case, 95 U. S., 232, Mr. Justice Bradley said:—

The judge properly refused the request to charge that the plaintiff could not recover if the insured knew that the act which he committed would result in death, and deliberately did it for that purpose. Such knowledge and deliberation are entirely consistent with his being, in the language of the charge, "impelled by an insane impulse which the reason that was left him did not enable 'him to resist,'" and are, therefore, not conclusive as to his responsibility or power to control his actions.

In the Broughton case, 109 U. S., 121, Mr. Justice Gray said:—

The remaining and the most important question in the case is whether a self killing by an insane person, having sufficient mental

capacity to understand the deadly nature and consequences of his act, but not its moral aspect and character, is a death by suicide within the meaning of the policy. * * * If he was impelled to the act by insanity which impaired his sense of moral responsibility, the company was liable.

In the Akens case, 150 U. S., 468, counsel presented the oft-discredited point, running thus:—

If the jury believe from the evidence that the self destruction of the said Smith was intended by him, he having sufficient capacity, at the time to understand the nature of the act which he was about to commit, and the consequences which would result from it, then and in that case it is wholly immaterial in the present case that he was impelled thereto by insanity which impaired his sense of moral responsibility and rendered him to a certain extent irresponsible for his action.

The learned trial judge there held:—

If he was impelled to the act by an insane impulse, which the reason that was left him did not enable him to resist, or if his reasoning powers were so far overthrown by his mental condition that he could not exercise his reasoning faculties on the act he was about to commit, the defendant is liable.

Mr. Justice Gray again repeated:—

If one whose life is insured intentionally kills himself when his reasoning faculties are so far impaired by insanity that he is unable to understand the moral character of his act, even if he does understand its physical nature, consequence and effect, it is not a "suicide."

All the cases from which we have just quoted, require that to constitute mental unsoundness the *reasoning* faculties must be so impaired by insanity that the suicide does not understand the moral character of his act; that the suicide must be urged by an *insane impulse*; that he must be impelled to the act by *insanity*, impairing his moral sensibilities; and that his *reasoning faculties* must be so impaired that he is not able to understand the moral character, &c., of his act. If the charge of the learned trial judge, as extracted, be examined, it will be found that he insisted upon all these requirements.

The appellant says the cases require that there shall be an "impairment not only of the moral vision, but also of the *will*, so as to leave the deceased in a condition that he was "unable to resist the impulse of self destruction."

It can hardly be said that a man so impelled by the impulse of self destruction as to be "unable to resist" it, is not a man whose "reasoning faculties are so far impaired by insanity that "he is unable to understand the moral character of his act, "even if he does understand its physical nature, consequence "and effect."

The definition of insanity to be found in *Davis vs. United States*, 165 U. S., 373, is stated by the appellant to contain an element which is lacking in the charge of the trial judge. This element is supposed to be found in these words:—

The term "insanity," as used in this defense, means such a perverted and deranged condition of the mental and moral faculties as to render a person incapable of distinguishing between right and wrong, or unconscious at the time of the nature of the act he is committing, or where, though conscious of it and able to distinguish between right and wrong and know that the act is wrong, yet his will, by which I mean the governing power of his mind, has been otherwise than voluntarily so completely destroyed that his actions are not subject to it, but are beyond his control.

Can it be said of a man, in whom the governing power of his mind has been, otherwise than voluntarily, "so completely "destroyed that his actions are not subject to it, but are be- "yond his control," that he is able to understand the moral character of his act and the consequences of the same to himself as well as to others, as a man of sound mind would?

As we have said, however, there was no request of the learned trial judge to charge concerning an insane impulse. He affirmed, in the language of the request, what he had been asked to charge as to what constituted insanity, and merely defined, by way of necessary addition, what was meant by "moral character of the act."

It is difficult to see how the reasoning of the appellant, to the effect that Runk was impelled to death by an insane and irresistible impulse which his weakened mental and moral powers could not withstand, is sustained by the letters quoted

on page 46 of his brief. These show the intention of Runk to sacrifice his own life in order that the debts might be paid for which he was criminally responsible. They establish nothing concerning being impelled by an irresistible, insane, impulse. What they do prove is, a thorough appreciation by Runk of the act he was about to commit, and the intent, not an insane one, which impelled him.

The "morbidly sensitive mind" of Runk was not displayed by the evidence. He had gambled in stocks with moneys which he had abstracted from the funds of charitable and religious institutions. His partner had discovered his embezzlement of firm moneys. He was confronted with social obloquy and criminal penalties. He was unwilling to face what was inevitable, and was determined to kill himself. Whilst doing this he desired to pay his debts, largely owing to near relatives, with the proceeds which would be realized from his insurance. Every element of an insane impulse is lacking in what Runk did. There was no claim in the evidence that he was so actuated. The points presented to the trial judge illustrate an idea of the appellant, not consistent with his present suggestion of "insane impulse."

It is true the learned trial judge did say to the jury that he did not "regard the evidence on which the plaintiff relies as strong." It would perhaps be well for the appellant, if he thinks the evidence really was strong, to refer to passages which support his opinion. It is difficult for the appellee to prove the negative. The affirmative, if provable, could easily have been established by the appellant, by citations. We can only say that an examination of the evidence will fail to disclose insanity, or anything approximating it.

We fail to appreciate the thought embodied in the following extract from the appellant's brief:—

When evidence has been adduced tending to show insanity, so that the question of sanity or insanity is an issue to be determined by the jury upon the evidence before them, then the burden of proof is upon the party who has charged the commission of a crime, not only to show the physical fact of the killing, but that the killing was done by one of sound mind. The failure to find this principle permeated the entire charge of the court below.

Insanity is not presumed. The burden of proof lies upon him who asserts it. If he adduces insufficient, or weak, evidence, he is aided by no presumption which supplements what fails to establish that fact of insanity, which it is his duty to establish.

III. There was abundant evidence tending to prove that Runk conceived a design of effecting policies for the benefit of his estate with the intent, thereafter, to take his own life.

In *Regina vs. Grant*, 4 Foster & Finlayson, 322, the defendant offered to prove that the prisoner's circumstances were easy. This was objected to, but Pollock held that it was admissible, "for when it was evident that possibly the prisoner's "motive might have been to realize the money insured upon "her goods, surely it was material to show that her circumstances were such as not to raise any temptation to the act." The evidence was admitted accordingly, and Denman, in reply, conceded that it was admissible and material.

The affidavit of defense set up the defense of fraudulent intent in securing the policies as well as the defense ultimately submitted, alone, to the jury. It reads, *inter alia*, thus:—

On or about the fifth day of October, 1892, he deliberately committed suicide, intending to kill himself, at a time when he was of sound mind, and in the full possession of his mental faculties. This suicide was not the result of mental unsoundness and was not occasioned by mental unsoundness. It was the deliberate act of a man mentally and morally able to understand all the consequences of his act.

Both defenses, as well as that growing out of the execution of the application, were opened by counsel. It is somewhat anomalous that the speech of counsel is returned as part of the record, though it forms no part thereof, whilst a very important piece of testimony, *i. e.*, the deposition of Mrs. Barcroft, is not. The appellee has been compelled to print this as an appendix to its argument.

During the whole trial both defenses were sought to be established by evidence.

After all the testimony had been presented, and after points had been submitted by the defendant, including one which very clearly raised the defense of fraud in the inception of the insurance, in these words:—

If you find that Runk obtained the policies of insurance sued upon at a time when he was insolvent and an embezzler, with the intent thereby to secure, in case of his death, from the plaintiff, the fund with which to pay those to whom he was indebted, and whose property he had embezzled; that he subsequently committed suicide, whilst of sound mind, with the deliberate intent to carry out this scheme, there can be no recovery.

After consideration of these points, the learned trial judge suggested that under the view which he took of the law, it would seem unnecessary to submit more than one question of fact; that being of the opinion that the policies could not be recovered upon, if the jury should find that Runk, when of sound mind, deliberately killed himself, it was not necessary to embarrass them by the other question in the cause, viz., the intent at the inception. As he suggested, if the intent was fraudulent at the inception, but if the self killing by Runk was whilst insane, the defense would not be good; but if the self killing was whilst sane, the original intent was unimportant.

Under this suggestion, and not because of any idea that the evidence did not justify the submission of the fact, counsel for the defense withdrew the third point and conceded that the judge might put to the jury simply the question upon which he charged. There was no intention to abandon for lack of evidence.

As no exception was taken to the evidence of Hopper, no error can be assigned to its reception. It is not necessary, however, to press this point, in view of what is equally fatal and more substantial.

The testimony of Cullinan, as well as of Hopper, showing the desperate financial situation of Runk at the time he entered into the additional contracts of insurance, was not the first evidence upon that point which was offered. A very large amount of proof had been previously given, without any objection, concerning the financial situation of Runk.

Under our view of the entire competency of the evidence, it is hardly necessary to add that no motion to strike it out was ever made.

Can it be successfully argued, in view of the admission by the plaintiff that he could not succeed if Runk entered into the contract with the intent subsequently to kill himself, that evidence was not competent which showed that at the time the policies were issued, Runk was an embezzler, was insolvent, and was without means to maintain them?

Practically, the appellant puts the error which he thinks was made, upon the refusal of the learned trial judge to charge that the evidence was "not sufficient to warrant the jury in "finding that the deceased entered into the said contracts of "insurance with the intention of committing suicide."

It is almost impossible to prove a fraudulent intent by direct evidence of declarations as to its existence by the man accused of entertaining it. Those who intend to perpetrate a fraud do not publish the fact. Their intent can only be gathered from circumstances.

Was not a jury at liberty to infer a fraudulent design from the following facts?

Runk, absolutely insolvent, having embezzled nearly \$85,000, obliged to pay annual premiums of about \$12,000 on policies of insurance to the amount of \$315,000, though he possessed no income other than the \$700 per month he could only continue to draw so long as his defalcation should remain unknown, procured, about the 10th of November, 1891, policies to the extent of \$195,000 additional, entailing the payment of an annual additional premium of about \$8000, though obliged to make the first payment, by improperly drawn store orders upon his firm, which remained partly unsettled at the time of his death.

Is it conceivable that he put upon himself this additional burden of \$8000 per annum, though without funds to keep up the insurance already existing, with no intention to bring the duty of payment to a speedy end? Within a year, with part of the premiums still unpaid, after writing letters in which he said he would kill himself in order that he might settle his indebtedness and embezzlements, with the insurance moneys,

he committed suicide. Would not the learned trial judge have done a gross injustice to the defendant, if he had charged that there was no evidence from which the jury might find an intent, at the time of taking out the policies, to defraud? It must be conceded that before the death there was a deliberate intent to render the insurance available by suicide. It was for the jury to say when this intent was first formed. Could they fairly have found, under the financial and other circumstances surrounding Runk at the time he secured the additional contracts, that he expected, for any considerable time, to pay the premiums? He must have known that he would be unable to raise the \$12,000 with which to meet the premiums on existing policies. Is it likely that he would have entailed upon himself a great additional burden, if he expected long to carry it?

It is probable that when these additional policies were taken out Runk determined to embark upon a speculation which, if it succeeded, would enable him to liquidate his embezzlements and indebtedness, but which, if it failed, would entail upon those whom he wanted to protect, no loss greater than what would be covered by the insurance.

During the period following the additional contracts, he overdrew his account with the firm. With these overdrafts it is more than probable he met the speculative margins he was compelled to give. He took care, however, to keep the amount of his overdrafts within a limit which, with the addition of embezzlements and previous indebtedness, would not be in excess of the amount of his insurance.

The appellant says that it was evident, by the testimony of one Pierce, that he had urged the taking of the additional insurance upon Runk, and that he succeeded in placing it by an appeal to the vanity of the latter. In what way the idea of an additional insurance first originated, we know not, but we do not credit the suggestion that, under the shadow of the penitentiary, Runk's vanity was an active factor. It may be that a suggestion by Pierce started the scheme; but Runk knew, what Pierce did not, that he was unable to pay the premiums, and that the additional insurance would be impossible to be maintained saving during a very short term of life. The

testimony of Pierce is utterly unreliable, as will appear by an examination of what he said with reference to an inability to induce Runk for some time to take the amount subsequently issued, although it appeared, by the signed application, that Runk, at that very time, had designated the method in which the total amount should be subdivided, and the amount of insurance to be issued in the name of his wife.

Nothing but what Runk had long known was inevitable, occurred between him and Darlington. For years he must have known that he stood upon the brink of disclosure. He doubtless contemplated, for at least a year, the possibility of that happening which he meant to meet by muleting the insurance companies.

The appellant lost nothing by the course taken under the suggestion of the learned trial judge. The issue of fraud at the inception of the policy was quite as likely to be decided against him by the jury as was that of Runk's soundness of mind at the time of his suicide. Had the testimony been erroneously admitted, the course taken in the charge, which put to the jury only the question of soundness of mind, eradicated all the evil. We rest, however, upon our assertion that the testimony was properly admitted, in proof of an issue which, if established, was a vital one, and that it was not within the power of the learned trial judge to say that there was no testimony sufficient to warrant a finding of fraud in taking out the additional insurance.

In *Smith vs. N. B. Society*, 123 N. Y., 88, it was said:—

The declarations must be made at the time of the act done which they are supposed to characterize. They must be calculated to unfold the nature and quality of the facts which they are intended to explain, and they must so harmonize with those facts as to form one transaction. That transaction, the thing done, the fact put in issue, was the fraud which evidently was not a simple, but a compound and continuous fact, proceeding to its result by consecutive steps and separate acts having necessarily an origin, a progress and an ultimate result, involving not only the intent of the assured, but also his sanity, without which the responsible intent could not exist. This fraud, therefore, could be studied and proved all along the line, and in all its stages, from origin to culmination, formed part of the issue to be investigated. If in such a case declarations are excluded which are merely narrative of a past trans-

action, the residue, so far as pertinent to the issue, will generally and with few exceptions be admissible in evidence.

It is thus not difficult to decide that the proof of applications by Tyler to thirty-six different insurance companies, by which he secured \$282,000 of insurance upon his life, and his letters and telegrams to relatives and friends written and sent as steps or agencies in the consummation of his purpose, and indicating a sane and deliberate intent to consummate the fraud, which for more than a year had been in preparation, by a final act of suicide, were all admissible. But some of the evidence was more remote and approached so near to the outside boundaries of the *res gestae* as to require a specific and particular examination. * * *

The declaration accompanied and characterized an act which was itself admissible in evidence, for that act indicated the then desperate character of Tyler's financial situation, and the declaration explained the operation and effect of the fact upon his mind, its force and strength as a motive to the fraud, and the presence of a thought or contemplation of suicide in a contingency which did in fact occur. The evidence serves to indicate the origin and motive of the alleged suicidal intent which grew to be the effective agency of the fraud. * * * They were contemporaneous with the fraud in its formative stages; they accompanied Tyler's efforts to raise money, which failed, and to procure an insurance upon his life which he knew he could not continuously maintain. They show the motive of the fraud and mark its progress, and harmonize so completely with all which afterward occurred as to constitute, with that, elements of the single transaction, the fraudulent conduct which raised the issue presented by the defense. And so I think the proof came fairly within the rule relating to the *res gestae*, and did not transcend its limits.

Some of this evidence was resisted upon the ground that death by suicide was no defense under the terms of the policy. That is true; but the defense was fraud, and suicide the ultimate agency by which the fraud was accomplished. It was necessary, therefore, to prove it, and in such manner as to indicate that it was not an insane or sudden impulse, but the culmination and effective working out of a deliberately conceived purpose of fraud.

Runk's consent to the issue of the policies was not "wrung from him only by the most persistent importunity of an 'agent.'" An agent suggested the advisability of additional insurance, and Runk, who was totally insolvent and was unable to maintain the payment of his premiums, and therefore knew what the agent did not, saw in the suggestion an opportunity of which he availed himself. It is not true that the

irregularities were almost entirely committed after the issuance of the policies in suit. The defalcations anterior to the issuance of said policies were very large, and involved charitable and religious associations.

What occurred within a week of Runk's death was the culmination, in consequence of an exposure, of what had existed for years.

The limitation of the issue by the court, in the submission of the case by counsel to the jury, was not because of the failure of the testimony, but because under the court's view of the law such enlarged submission was unnecessary.

The evidence discloses what was stated by the appellee's counsel in his opening, viz., that at the time the policies were taken out Runk was insolvent to the extent of upwards of \$350,000; that he had theretofore embezzled the funds of the charity of which he was the treasurer and of the firm of which he was a member; that he was unwilling to face the dishonor and disgrace which was imminent; and that he was unable, by any possibility, to continue to carry the new policies which he caused to be issued.

CHAS. P. SHERMAN,
EDWD. LYMAN SHORT,
JOHN G. JOHNSON.

APPENDIX.

A. Howard Ritter, Executor of the estate of William M. Runk, deceased,

vs.

The Mutual Life Insurance Company of New York.

A. Howard Ritter, Executor of the estate of William M. Runk, deceased,

vs.

The Home Life Insurance Company.

Deposition* taken without rule, by agreement, upon mutual understanding as to time, of Mrs. Mary A. Barcroft. Deposition taken because of a physician's certificate that Mrs. Barcroft would not be able to be in attendance at court.

Present—Mr. George Tucker Bispham, for plaintiff; John G. Johnson, Esq., for Mutual Life Insurance Company; and John Scott, Jr., and John G. Johnson, Esqs., for Home Life Insurance Company.

MRS. MARY A. BARCROFT, being duly sworn, deposed as follows:—

By MR. JOHNSON:

Q. At the time of William M. Runk's death, was he indebted to you, and if so, in what amount?

A. Yes, sir; I held his note for \$127,550.

Q. Do you remember the date of that note?

A. November 10th, 1890.

Q. That was his total indebtedness to you, was it, at the time of his death?

A. Yes, sir.

*This deposition was read at the trial (see Record, page 56), but has been in some way omitted from the Record filed.

Q. Had he had any charge or custody of your financial matters in any way?

A. No, sir.

Q. What collateral did you have for that note?

A. Life insurance policies.

Q. Can you tell in what companies?

A. Policy No. 36,437 in Penn Mutual Life Ins. for \$5,000

“	“	36,438	“	“	“	“	“	5,000
“	“	42,802	“	“	“	“	“	20,000
“	“	110,445	“	North Western Mut.	...	“	“	10,000	
“	“	12,796	“	State Mutual Life Assur.	“	“	“	10,000	
“	“	172,721	“	Northwestern Mut. Ins.	“	“	“	35,000	
“	“	228,556	“	New York Life Ins. Co.	“	“	“	25,000	
“	“	228,557	“	“	“	“	“	“	25,000

Q. And these policies you retained, without any change, until his death?

A. Yes, sir.

Q. And upon his death, you collected some of them?

A. Yes, sir; all of them.

Q. Do you remember the total collected?

A. There was some interest due, and there were some bonds that had to be redeemed, and I just made use of all of them to pay these off, and, I think—I am quite sure, that it took the whole amount.

Q. How much did you realize from the policies?

A. \$135,000; it may have been a little over.

Q. Then there was enough realized from the policies to pay the note?

A. Yes, sir.

Q. That note was one that he gave for a loan that was regularly made and continued from time to time?

A. Yes, sir.

Q. Did you renew the note, or was it the same note?

A. It was the same note.

Q. Didn't you, from time to time, advance him some other moneys?

A. Never without his asking for it.

Q. Tell us what those amounts were.

A. I couldn't tell you. My books will show every dollar, but I cannot tell now.

Q. Have you them here?

A. Mr. Tener has them at the Mortgage Trust Company. They will give you every dollar, dates and everything. They were kept very correctly.

Q. Have you any idea of the aggregate, at the time of his death, of the other advances?

A. I cannot answer that.

Q. Was it as much as \$100,000?

A. I think it might have been.

Q. You spoke, Mrs. Barcroft, of using that \$135,000, or some of it, in taking up some bonds. What bonds were they?

A. Norfolk and Western Railroad Company, Baltimore and Ohio Railroad Company—there were three sets of bonds. I forget the other.

Q. With whom were those bonds?

A. He took them from me, and I don't know where they were.

Q. How did he take them?

A. He asked me for the loan of them.

Q. Do you remember when?

A. I think the Norfolk and Western was just about a year before his death, and the others were some time previous to that—a year or two. At the time of this note being drawn up there was, I think, a list that he had as to the Norfolk and Western bonds. The books will tell.

Q. At the time these advances were made to him did you take any obligation from him?

A. No, sir.

Q. How was it that you took the obligation for the \$127,550 and did not for these?

A. I wanted a settlement with him for what he owed me—some arrangement made whereby he would be protected in his business and I would be protected, and I thought it was proper and right to do so. I came to see Mr. Bullitt, and he made all the arrangements. I wanted him to be protected in his business, and I might die, and I wanted my estate protected.

Q. But you have not told us how the indebtedness—how

did he become indebted in this way? Did he, in the first instance, borrow these bonds from you?

A. Yes, sir.

Q. When he borrowed them from you, what did you take from him to show that he owed them?

A. Nothing. I signed a paper giving him the power to use them. I remember that.

Q. Was that a written paper?

A. It must have been; yes, sir; I never had it.

Q. And were all of these bonds advanced to him on that paper?

A. Not on that one paper, but at different times, and on different papers.

Q. What became of the papers?

A. I cannot tell you. I never had them.

Q. Have you any idea what those bonds were pledged for, that you took up after his death?

A. I cannot tell you that, sir. I think Mr. Tener can tell you.

Q. How did you ascertain where those bonds were?

A. I can't tell you that.

Q. Who did ascertain it?

A. Mr. Tener.

Q. Weren't they in the hands of brokers?

A. I think so, sir.

Q. Had you loaned them to him for the purpose of pledging them with brokers?

A. No, sir.

Q. You were entirely ignorant of that use of them?

A. Yes, sir.

Q. You loaned him money to put in his business?

A. Yes, sir.

Q. And supposed that it was in his business?

A. Yes, sir.

Q. When did you find the contrary?

A. Not until after his death.

Q. Did you know, at any time, that he was speculating in stocks?

A. No, sir.

Q. You saw him pretty frequently up to the time of his death?

A. Almost daily. I could not tell how often, but two or three times a week.

Q. And that fact he never disclosed to you up to the last moment?

A. No, sir.

Q. Nor gave you any idea, of any sort or kind, that he had been doing it?

A. No, sir; and I had not the slightest suspicion of it.

Q. Do you remember many years ago he became involved in some difficulty owing to speculation in Jersey Central, where you helped him out?

A. I know nothing about it.

(Mr. Bispham objects to this and to the manner of question generally, with a reservation of the right to object to the disability of the witness, saving that such objection shall not be to the mere shape of the question.)

Q. Do you remember paying any money on William M. Runk's account after his death, to the Episcopal City Mission?

A. Yes, sir.

Q. How much was that?

A. \$40,000.

Q. That was the amount which, as treasurer, he had embezzled, was it not?

A. I don't know how he got it.

Q. He had been the treasurer?

A. Yes, sir; and the report was that he had used that money.

Q. I take it for granted your intervention was simply to save his credit?

A. Yes, sir; himself and his family.

Q. Were there any other settlements which you made after his death in order to preserve his credit?

A. No, sir. Mr. Darlington and I agreed to indemnify the executor against loss if he would pay the small bills and the estate should prove insolvent.

Q. It was found, in this Episcopal City Mission, that he, as treasurer, had appropriated a certain amount of cash, and used

certain of their bonds, and you then agreed that you would pay them the amount that was due, and should take an assignment of their claim against the estate?

A. Yes, sir; that is correct.

Q. You presented at the audit a claim of \$86,736 against the estate in the Orphans' Court. Do you remember that?

A. I saw that in the paper, but I don't know how it came about. It was so printed in the paper. I had not done anything like that. I went to Mr. Tener and he explained about it. I had only \$40,000; not the whole amount.

Q. Do you remember what his explanation was, now?

A. They made it so as to cover up the City Mission. It was fixed with the court, or something of that kind, that it should not be that he owed the City Mission; that I had assumed it.

Examination of MR. TENER, with the books:—

Q. Mr. Tener, tell us, please, how much Mrs. Barcroft got from the policies of insurance; how much she loaned Mr. Runk; the amount of bonds of hers he had pledged with the brokers and the dates at which she had loaned him these bonds.

(Mrs. Barcroft's books, as kept by Mr. Tener, are now produced at the suggestion of counsel, and she is allowed to refresh her memory and inform herself as to details therefrom, with his assistance.)

A. The books show that the amount received from insurance was exactly \$135,000. October 11th, 1892, New York Life Insurance Company, \$50,000; October 12th, 1892, from the Penn Mutual Life Insurance Company, \$29,290.71. In explanation of the odd amount, there was some reduction, I think, of a premium note against it. November 8th, from the Northwestern Life Insurance Company, \$45,109.80; November 11th, from the State Mutual Life Insurance Company, \$10,000; amounting in round figures to \$135,000.

Q. Now, I wanted to see how much of that money was paid, and when and to whom in taking up her bonds, which had been pledged with brokers.

A. On November 11th, Mrs. Barcroft paid the Beneficial

Saving Fund Society \$10,167.50 to redeem \$10,000 bonds of the Baltimore and Ohio, which I understand she had loaned Mr. Runk.

Q. They were pledged with the Beneficial Saving Fund Society on Mr. Runk's note, of course?

A. Yes, sir; as collateral security.

By Mr. BISPHAM:

Q. Do your books show the date when the bonds were pledged?

A. No, sir.

By Mr. JOHNSON:

Q. It will show the date of Runk's note?

A. No, sir..

Q. Do the books show what the amount of Runk's note was?

A. No, sir; we just simply relieved the bonds for the amount that they had charged against them. In other words, we paid off the loan. On the same day, November 11th, 1892, paid the Philadelphia Saving Fund Society \$17,353 for the purpose of redeeming \$12,000 bonds of the Norfolk and Western, and \$5000 bonds of the Camden and Atlantic Railroad Company, and \$1000 City of Cincinnati. in all, \$17,353. November 17th, paid to R. E. Tucker & Co., brokers, \$2057.08 in redemption of \$2000 of bonds of the Camden and Atlantic Railroad Company and \$1000 Lehigh Valley Railroad Company. That seems to be about all.

Q. That would expend only about \$29,410. The balance of the \$135,000 must have been put into something.

A. When Mr. Runk went into business with Mr. Darlington, in 1878, Mrs. Barcroft loaned him \$69,000 in money to make up his \$100,000 share of the capital of that concern, and subsequently from time to time she loaned him from \$28,000 to \$30,000 additional, as he needed money. The \$28,000 to \$30,000 was not loaned at one time. There were loans from time to time upon which payments were made.

Q. Were these loans of \$69,000 and \$28,000 to \$30,000 additional to the note of \$127,550?

A. Which note do you refer to, Mr. Johnson?

Q. The note that Mrs. Barcroft took in 1890.

A. The note for \$127,550 was taken in 1890, in settlement of all the advances up to that time.

Q. But what I wanted to see by the books was whether there was not paid out of this \$135,000 that was got after Runk's death a larger amount than the \$10,000, \$17,000 and odd and \$2000 and odd in taking up the bonds of Mrs. Barcroft's.

A. There was a balance of interest against him in this account of a little over \$4000.

Q. He was that much back in his interest at the time of his death?

A. Yes, sir; that was only six months' interest on the whole indebtedness.

Q. I do not, of course, mean what Mrs. Barcroft took, which of course she had a right to in payment of the debt, but whether she did not use more than these three sums of that \$135,000 in redeeming bonds of hers which Runk had pledged?

A. Not one dollar, and I may add in addition to that that there was a balance of \$350.13 due her after all the insurance was paid.

By MR. BISPHAM:

Q. That represented the total indebtedness of Mr. Runk to Mrs. Barcroft?

A. Yes, sir.

Q. That is, the \$135,000 collected on the insurance policies, plus this balance of \$350, represented the total of Mr. Runk's indebtedness to Mrs. Barcroft at that time?

A. Yes, sir.

By MR. JOHNSON:

Q. Then how was this \$86,736 made up, Mr. Tener?

A. On February 3d, 1893, Mrs. Barcroft issued her check for \$35,000 to be paid to the Protestant Episcopal City Mission, and she took an assignment of the claim of the City Mission against the estate. On March 17th there was a further sum of \$5000 paid in the same way, and again, the same day, \$140.36. On December 27th, 1893, a still further sum of \$859.62 was paid through Mrs. Barcroft's counsel to the City Mission. This makes a total of \$40,999.98.

Q. She spent \$40,000 out of her own account?

A. Yes, sir; they were her own. They had nothing to do with the City Mission.

Q. Her claim of \$86,000 was composed partly of that?

A. The insurance paid for this. That is, her entire claim was made up a little short of \$100,000 in money actually paid, and in money afterwards advanced to redeem the bonds and the interest. This first matter that we were speaking of had no connection with the City Mission.

Q. Didn't he owe the whole of that note, \$127,550, at the time of his death?

A. Yes, sir; the \$30,000 which Mrs. Barcroft loaned were part and parcel of that \$127,000.

Q. These bonds, then, which were taken up at the Philadelphia Saving Fund, and the Beneficial Saving Fund and Tucker & Co.—these bonds thus taken up made up part of the \$127,550?

A. Yes, sir.

Q. Well, then, there was upwards of \$45,000 that was not included?

A. I have no knowledge whatever of the claim that was sent to the executor of the estate. I don't know how that was made up.

Q. Can you tell by the books when these bonds were loaned to Runk?

A. When they were loaned there was no entry made, but Mr. Runk afterwards gave Mrs. Barcroft a due bill, which is in her possession. That is in the Fidelity Company. It was six or seven years ago—six years at least.

Q. Who will know about that?

A. Mr. Ritter is very familiar with all the details of this claim.

Q. Mrs. Barcroft, after hearing what your books contain, and having your memory refreshed as far as these books will refresh it, you cannot give us any further explanation of how the claim of \$86,000 was made up?

A. It was made up by the City Mission, and with life insurances paid in to the executor he was able to pay off that much,

\$40,000 and odd. And then he came short—he expected to settle the whole amount.

By Mr. TENER:

As I understand, the \$40,000 paid by Mrs. Barcroft to the City Mission testified to, was in addition to an amount of some \$45,000 paid by the executor on account of the total claim, and Mrs. Barcroft, in order that there might be no claim against the executor for having thus paid it, assumed the entire amount.

Q. Of course, Mrs. Barcroft, during the lifetime of Mr. Runk you were in total ignorance of that shortage?

A. Entirely so. I knew he was the treasurer, but as for his using any of the money, I didn't know anything about it.

Q. Did you receive a letter shortly before the death of Mr. Runk, or immediately after, written by him?

A. Yes, sir.

Q. Have you that letter?

A. Yes, sir.

Q. Will you let me see it?

(Letter produced and read by Mr. Johnson.

Envelope addressed, "Mrs. M. A. Barcroft.")

"ST. DAVIDS, P.A.
"LLANDEILO.

"MY DEAR AUNT MARY:—Forgive me for the disgrace I bring upon you, but it is the only way I can pay my indebtedness to you. A. Howard Ritter will attend to all my affairs with Evelyn. You have always told me my mind was "not strong. I have been led astray, have been infatuated "with speculation and lost. I worked too hard,—I am wild "but cannot recover now.

"Thank you for all you have been to me in every way.
"Forgive.

"Affectionately,

"TUESDAY, OCT. 6, '92."

"WM.

Q. That was received by messenger?

A. The letters were laying in the house, and his wife took charge of them. She handed it to me.

Q. Of course you are aware that if the insurance policies are collected that this amount of \$86,736 will all be recoverable by you?

A. Only the \$40,000. The other has been paid out of the estate, if I understand right. He paid out of the estate, out of the insurance he received, all he could, and when he could not pay any more I saw proper to settle the thing up.

No cross examination.

Signature waived.



No. 142.

FILED,
DEC 17 1897
JAMES H. MCKENNEY,
CLE

App^x to ~~Op^x of~~ ¹⁴² ~~Shaw & Johnson~~
for the use of the Supreme Court in the case of ~~Rusk~~, ^{vs.}
of Rusk *vs.* The Mutual Life Insurance Company of New
York—No. 142 of October Term, 1897 ~~for D. C.~~

Filed Dec. 17, 1897.

STATE OF ILLINOIS.

Appellate Court—Third District.

At an Appellate Court, begun and held for the Third District
of the State of Illinois, at Springfield, on the third Tuesday in
May Term, A. D. 1897.

Present—Hon. O. J. HARKER, Presiding Justice.

“ J. J. GLENN, Justice.

“ B. R. BURROUGHS, Justice.

Attest :

W. C. HIPPARD,
Clerk.

To wit : On the 2d day of December, A. D. 1897, there was
filed in the office of the Clerk of said Court an opinion of said
Court, in the words and figures following :



Docket No. 60.

May Term, 1897.

Agenda No. 50.

Filed Dec. 2, 1897.

THE SUPREME LODGE KNIGHTS OF
PYTHIAS OF THE WORLD,
Appellant,

vs.

HENRY J. KUTSCHER, Administrator
of LOUISA M. HENRY, deceased,
Appellee.

Appeal from
Sangamon.

Opinion of the Court.

BURROUGHS, J.:

This is an action of assumpsit, brought by the appellee Kutscher, as administrator of Louisa M. Henry, deceased, upon a certificate of membership, or policy of insurance, issued by appellant to one William C. Henry, who was the husband of Louisa M. Henry. For the sake of brevity, we will hereafter speak of said certificate, as a "policy."

The policy is in words and figures following: "Fourth class, \$3,000.00. This certifies that Brother William C. Henry received the obligation of the Endowment Rank of the Order of Knights of Pythias of the World in Section No. 45 on July 1, 1889, and is a member in good standing in said Rank, and in consideration of the representations and declarations made in his applications, bearing date of June 4, 1889, and April 26, 1892, which applications are made a part of this contract, and the payment of the prescribed admission fee; and in consideration of the payment hereafter to said Endowment Rank, of all assessments as required, and the full compliance with all the laws governing

this Bank now in force, or that may hereafter be enacted by the Supreme Lodge Knights of Pythias of the World, or the Board of Control of the Endowment Rank, and shall be in good standing under said laws, the sum of \$3,000 will be paid by the Board of Control of the Endowment Rank, Knights of Pythias of the World to Louisa M. Henry, his wife, as directed by said brother in his application, or to such other person or persons as he may subsequently direct, by change of beneficiary entered upon the records of the Supreme Secretary of the Endowment Rank, upon due notice and proof of death and good standing in the Rank, at the time of death, and surrender of this certificate. Provided, however, that the interest of any beneficiary as designated by said brother, or the interest of his or her heirs shall cease or determine in the case of the death of said beneficiary during the lifetime of such member, and in that case the benefit accruing under this certificate shall be paid as provided for in Article Twelve, Section One, of the Endowment Rank of the Constitution. Provided, further, that if at the time of the death of said brother the proceeds of one assessment on all members of the Endowment Rank shall not be sufficient to pay in full the maximum amount of endowment held under this certificate, then there shall be paid an amount equal to the proceeds of one full assessment on all remaining members of the Endowment Rank, less 10 per cent. for expenses, and the payment of such sum to the beneficiary or beneficiaries entitled thereto under the law shall be in full of all claims and demands under and by virtue of this certificate. And it is understood and agreed that any violation of the within-mentioned conditions or the requirements of the laws in force governing this rank, shall render this certificate and all claims null and void, and that the said Endowment Rank shall not be liable for the above sum or any part thereof.

IN WITNESS WHEREOF we have hereunto subscribed our names, and affixed the seal of the Supreme Lodge Knights of Pythias of the World.

Issued this 19th day of July, 1892, pp. XXIX, at Chicago, Illinois, and registered in Book 3, fol. 130.

On the 3d day of October, 1895, William C. Henry departed this life, having paid all assessments and performed all other conditions of said policy ; and left surviving him his wife, Louisa M. Henry, who died before suit was brought, and leaving surviving her two children. Demand was made for payment of the sum specified in said policy, and an offer also made to surrender the same, but payment was refused. There being no controversy as to the sufficiency of the declaration, it is not necessary to set it forth with any degree of particularity. Various pleas, replications, rejoinders and demurrs were filed, some of which were afterwards withdrawn. These steps need not be herein stated except as to those pleadings which finally made up the issues.

The appellant filed the general issue (non-assumpsit) and issue was joined thereon. The appellant also filed two special pleas setting up that all the supposed causes of action in the declaration described are one and the same. That the appellant is a corporation organized for fraternal and benevolent purposes and for the mutual benefit of the members. The first plea also alleges that said William C. Henry was a member of Capital Lodge No. 14, and also a member of Section 45, and was subject to the constitution and rules, by-laws and regulations of the Endowment Rank Knights of Pythias of the World, and agreed to abide by all laws, rules and regulations of said Order, then in force or as the same might be thereafter adopted or amended.

The plea also alleges that on the 4th day of June, 1889, and on the 26th day of April, 1892, said Henry executed and presented to defendant his applications for membership in the Endowment Rank, which applications became part of the contract of insurance, and such applications are made parts of said plea. That by the terms of said applications it was provided as follows :

“ I hereby agree that I will punctually pay all dues and assessments for which I may become liable, and that I will be governed and this contract shall be controlled by the laws, rules and regulations of the Order governing this Rank now in force or that may hereafter be enacted by the Supreme Lodge Knights of Pythias of the World, or submit to the penalties

therein contained, to all of which I freely and willingly subscribe."

The plea further avers that on the 13th day of January, 1893, the Supreme Lodge through its authorized Board of Control passed a law, rule and regulation for the government of members of the Endowment Rank in the words and figures following:

"If the death of any member of the Endowment Rank heretofore admitted into the first, second, third or fourth classes or hereafter admitted shall result from self-destruction, either voluntary or involuntary, whether such member shall be sane or insane at the time, or if such death shall be caused or superinduced by the use of intoxicating liquors, narcotics or opiates, or in consequence of a duel or at the hands of justice, or in violation or attempted violation of any criminal law, then in such case the certificate issued to such member and all claims against said Endowment Rank on account of such membership shall be forfeited."

The plea further alleges that at its annual session in the city of Washington in September, 1894, the Supreme Lodge adopted and ratified said law and the same became and was in force from and after its passage on January 13, 1893, as an amendment to the general laws of the Endowment Rank.

The plea further alleges that said William C. Henry came to his death by self-destruction, and that in accordance with the contract entered into said certificate became forfeited and void.

The defendant also filed a third plea, being the second special plea, in substance the same as the first with this exception. That the third plea alleges that said law, rule and regulation was adopted on the 13th day of January, 1893, by the Board of Control of the Endowment Rank without stating that the same was ratified or adopted by the Supreme Lodge.

Appellee filed replications as follows:

First replication to the third plea avers that the Board of Control had no power to pass the said law or regulation, and did not pass the same on the 13th day of January, 1893, or at any other time, and said certificate did not become void. This replication concluded to the country and issue was joined thereon.

Appellee's replication to the second plea is the same in substance as the foregoing with this difference only, that it denied that the Supreme Lodge adopted or ratified the rule or law in question. This replication also included to the country and issue was joined thereon.

Appellee also filed another or second replication to defendant's second plea, in which was averred that at the time when William C. Henry committed self-destruction "he was of unsound mind to the extent that he was not conscious of the moral or physical efforts of what he was doing, and that he did the same when in a fit of frenzied madness, when he had no ability to form an intention, and did not voluntarily and intentionally destroy himself." To this replication a rejoinder was filed by the appellant reversing the same, and alleging that William C. Henry did not commit said act while in a fit of frenzied madness, but did commit self-destruction voluntarily and intentionally. Issue was taken upon said rejoinder and trial had by jury.

Verdict for plaintiff for \$3,000.

Motion for new trial.

Grounds of motion. The Court erred in excluding evidence from the jury, that the deceased Henry committed self-destruction as a result of mental disorder arising from present voluntary intoxication. Also excluding certified copies of proceedings and verdicts of coroner's inquest over the body of Henry and his wife. The Court erred in instructing to find the issue for appellee; also in refusing to give each of the four instructions offered by the appellant; the verdict was unsupported by any evidence; the Court erred in admitting improper evidence on the part of appellee; the Court erred in excluding from the jury each instruction, record or proceeding, rule or regulation embraced within the stipulation of the parties, the substance of which is contained in the next paragraph.

Before the trial counsel for the parties stipulated in writing that on the trial certain instruments, records, printed volumes and other documents should be admitted in evidence by either party. These included constitutions of the Knights of Pythias and of the Endowment Rank and proceedings of both bodies at various times; also the general laws of the Endowment Rank; also the application of William C. Henry, filed with

appellee's second plea, should be considered in evidence without further proof. It was, however, provided in said stipulation that the terms thereof were not to conclude either party as to the legal effect or legality of any of such evidence, but only render it easy of proof and evidence of what it purports to be on its face, by leaving its legal effect to be determined by the Court at the trial. There is no controversy whatever in this case as to the regularity of proof under said stipulation, only as to the effect of the evidence when admitted.

Appellee proved the death of William C. Henry and his wife Louisa afterwards, and that she left surviving her two children. Appellee also proved that William C. Henry paid up all his dues to the order, or they were paid on his behalf up to the time of his death. The daughter of the deceased parties testified that her father came home on the evening before her mother died about a quarter to five. Her mother was out riding when her father came home. On cross examination defendant's counsel asked witness "What happened after that?" Plaintiff objected and the Court sustained the objection. We may here state, in order to save time, that all rulings of the Court hereinbefore or hereinafter referred to were, at the time the same were rendered, excepted to by appellant.

It was proven by E. A. Baxter, Sheriff of Sangamon County, that he, being informed that Mrs. Henry was shot, went, about seven the next morning, to where William C. Henry's body was lying. Witness was called just after Henry shot his wife. Henry was dead. Right hand raised up. Revolver lying close by there and an open knife. Cut across the wrist.

In the testimony of Martha Horsch, it is shown that the deceased Henry was ordinarily a very intelligent man, and a good locomotive engineer, but something became wrong with him. Witness saw him one or two evenings before he died. He was under the influence of liquor. Mrs. Henry sent for witness. He was going to clean out the house. Witness found him on the floor and picked him up and put him to bed.

Charles Shriner testified also about occasional strangeness on the part of William C. Henry. Testimony in regard to the mental condition of Henry was given by George Hoffman, who was also employed by the Wabash Railroad. This man was very intimate with the deceased. Knew him thoroughly. His

strangeness arose from intoxication. When under the influence of liquor he was very quick tempered. Quarrelsome disposition, although he talked very good. He would talk and quarrel and witness knew when he was under the influence. Next day he would not remember anything and begged pardon. He was different from other drunk men. Would not talk heavy or stagger. He was not that way. He would walk straight and had a quarrelsome disposition about him. Liquor affected him differently from ordinary men. Had been discharged for drunkenness. Wanted to stop every place where a station was to get liquor. Wanted to fight every man on the train. This was several years before the company took him back. He knew how liquor affected him, and talked about it. Three or four months afterwards he was again drinking. Witness saw him in grocery three or four days before the killing. There was a saloon there. He was under the influence then. Could only know when these spells were on him by his quarrelsome disposition. He did not get off his legs or lose control of his body. Talked clearly but acted quarrelsome. Saw him in Elshoff's store three to five days before murder. Smell of liquor convinced witness he was drunk and said to him: "Bill, you have been drinking again." This made him mad, and he lost control of his temper. Witness glided away. Next day he apologized.

J. W. Asey, testified that he saw the body between six and seven on the fourth of October, 1895, probably dead some hours. Body stiff. Witness saw the man the night before. Just this side of where he found him. Probably fifty yards off. Passed very close to shock of corn. Looked up and discovered body. Witness had seen the man go behind the shock the night before, and in the morning he looked to see if the body was there. Right hand kind of up, resting his head partly on it. Pistol lying on the ground under where the hand stuck up. Saw a knife there. Think it was under his head. It was open. Wound in the temple like a pistol wound. Saw him go behind the shock the evening before about half-past six.

Defendant's evidence.

Defendant introduced under stipulation report of the Board of Control of the Knights of Pythias found in the record, and

proceedings of convention of Supreme Lodge 1893 and 1894, the session of 1894, having been held in Washington City, August 28th to September 8th, 1894. The report of the Board of Control set forth reasons why losses arising to the order from suicide should be guarded against. Gives reasons and sets forth that in the preceding fifteen months claims amounting to \$63,000 arising out of suicides had occurred, and the safety of the mortuary fund was thereby in danger. Also that the Board had amended the laws providing that in the event of self-destruction the certificate should be void. To that end the said Board on January 12th and 13th of 1893 had amended Section 1, Article VI. of the general laws by adding to the end of said section as follows: "the new law, rule or regulation thus here set forth has been already given in full in the pleas of the defendant, and need not be repeated."

It was referred by the Supreme Lodge to Committee on Endowment Rank. The reports of the Committee on Endowment Rank were taken from the table and adopted. The appellee also introduced the law as adopted by the Board of Control in the revised edition of the general laws, March 1st to 18th, 1894, being the same law hereinbefore referred to. The law last referred to being offered by the appellant, the appellee objected, and the Court sustained the objection, so that the law in question was withheld from the jury.

Appellant introduced Section 9, Article VIII. of the constitution of 1890 of the Endowment Rank authorizing the Board of Control to enact laws, rules and regulations and to alter and amend the same. Also Section five, Article II. of the same constitution. It empowers the Board of Control to enact, alter and amend laws and regulations necessary to govern the same. Also the constitution of the Supreme Lodge of 1890, 1892 and 1894, and the constitution of the Endowment Rank. Constitution provides that the supreme body shall have power to establish an Endowment Rank and to create a Board of Control for the government thereof; that said Board shall have entire control of said Endowment Rank. Board empowered to grant warrants to establish sections of Endowment Rank and to enact, alter and amend all laws and regulations necessary.

Constitution of 1894, this constitution appears in the larger

pamphlet, and is made part of the record, the first page thereof being numbered at the foot 6955.

In Article Seven, Sections Fifteen, Sixteen, Seventeen and Eighteen on head, page 6961, special directions are given as to the methods of legislation to be pursued by the Order. Every proposition should be read three times on a different day; the majority of all members necessary to pass any proposition; all statutes to take effect after sixty days.

Appellee offered in evidence the two applications filed with plaintiff's pleas, one of them being the application on which policy sued on was issued. Appellant objected, and Court withheld ruling. Appellant called Louisa, daughter of William C. Henry, who formerly testified. Witness stated that she was at home on the evening of October 3, to which she had before testified. And then the following question was put to her: "If your father came home at that time, or about that time, you may tell the jury what happened there in your presence." Appellee objected, and the Court sustained the objection, and refused to permit the evidence to go to the jury. Appellant then offered in evidence the verdict of the coroner's jury in the cases of both of the deceased, the wife, Louisa M. Henry, and her husband, William C. Henry. Verdicts, in substance, are as follows: As to the wife, that she came to her death by a revolver wound fired by her husband, William C. Henry, while under the influence of liquor. As to her husband, that he came to his death by a revolver shot. Both verdicts were objected to by appellee. Objections sustained by the Court; appellant rested.

By way of rebuttal, appellee introduced charter of Supreme Lodge of August 5th, 1890, as follows: "That the following additional section, to be known as section nine, be added to the act of incorporation as amended, viz.: 'That the Supreme Lodge shall have power to establish the uniform rank and the Endowment Rank upon such terms and conditions and governed by such order and regulations as to the said Supreme Lodge may seem proper.'

Appellee also introduced the report from the committee on Endowment Rank of nineteenth convention, 1895, reporting that, under the constitution of 1894, the Supreme Lodge had no power to delegate to another body the right to legislate

on any subject, and that such action, if taken, is null and void, and recommending the enactment by the Supreme body of the suicide law in question.

Thereupon the court, on motion of the appellee, excluded all evidence offered by the appellant of the acts and proceedings of the Board of Control, of the Endowment Rank and the Supreme Lodge, and the constitution of 1890, 1892 and 1894; and the court also excluded the application offered in evidence.

The appellant asked the court to give the jury the following instructions:

1. The plaintiff in this case admits that the deceased, William C. Henry, committed self-destruction, and the defendant is not required to prove this fact.

2. If the jury believe from the evidence that the deceased committed self-destruction by reason of mental derangement occasioned by existing voluntary intoxication, then such act is not excusable because of insanity, and the plaintiff cannot recover in this action.

3. The jury are further instructed that the law presumes every man to be sane until the contrary be proven, and the burden of making such proof rests upon the party alleging such insanity. And the fact of committing self-destruction does not of itself establish the insanity of such person.

4. The jury are instructed that if they believe from the evidence that the deceased William C. Henry, committed self-destruction while in a sane condition, then they will find for the defendant without regard to any rule or law adopted by the Board of Control, or by the Supreme Lodge or claimed to be so adopted.

But the Court refused to give said instructions and thereupon the Court gave the jury the following instructions :

" The Court instructs the jury to find the issues for the plaintiff and to assess his damages at the sum of \$3,000, and the form of your verdict may be : We, the jury, find the issues for the plaintiff and assess his damages at the sum of \$3,000."

Thereupon the jury found a verdict for the appellee, and the appellant filed its motion for a new trial. Motion overruled and judgment on verdict for \$3,000.

From the exceptions taken, and the errors assigned on this record the legal questions presented, upon which the merits of this case rest, are: *First*—If William C. Henry committed self-destruction while sane, did that fact avoid the policy? *Second*—Did the stipulation, set forth on the face of the policy, authorize the "Board of Control of the Endowment Rank" of appellant, to adopt the rule, law or regulation providing that all policies should be void in case the assured committed self-destruction, whether sane or insane, so as to make it apply to the policy sued on in this case?

As to the first question above stated, we think the law is, that where a policy contains no provisions making suicide or self-destruction, by the assured, a forfeiture of the policy; and also makes the indemnity under it payable to some one other than the assured, or his personal representative, then intentional self-destruction by the assured, while he is sane, does not avoid the policy. But, where such a policy is by its terms payable to the assured or his personal representative, then intentional self-destruction, while sane, will avoid the policy. (Northwestern Benevolent and Mutual Aid Ass'n *vs.* Barbara Wanner, 24 Ill. App., 357.)

The reason why the *estate* of a sane man, who takes his own life intentionally, cannot recover is that to so permit would enable a man by his own wrongful act to have his estate make a profit thereby.

As to the *second* question presented we will say that from the evidence in this record it does not appear that the Supreme Lodge did, before the death of William C. Henry, adopt the law, rule or regulation for the government of members of the Endowment Rank in the words and figures following: "If the death of any member of the Endowment Rank heretofore admitted to the first, second, third or fourth classes, or hereafter admitted, shall result from self-destruction, either voluntary or involuntary, whether such member shall be sane or insane at the time, or if such death shall be caused or superinduced by the use of intoxicating liquors, narcotics or opiates, or in consequence of a duel or at the hands of justice, or in violation, or attempted violation, of any criminal law, then in such case the certificate issued to such member and all claims against said Endowment Rank, on account of such membership, shall be forfeited." As by its plea it had averred.

But it does appear from the evidence that the Board of Control of the Endowment Rank, of appellee (which Board of Control, from the evidence, was the Board that supervised the business of the insurance department of appellant) before the death of William C. Henry, and after the issuance of the policy sued on in this case to him, did what they could do, to enact said law, rule or regulation above mentioned. But we hold that said Board of Control was but an agency of appellant, to whom appellant could not delegate its legislative functions to enact a law that would inject into the policy sued on, a provision making suicides, &c., avoid it. See Supreme Lodge Knights of Pythias of the World *vs.* LaMalta, 31 Southwestern Reporter 493, decided by the Supreme Court of Tennessee, which is a case just like this, and we fully concur in the decision, as well as the reasoning of that Court, as set forth in its opinion in that case.

It is contended, however, by appellant, that the policy sued on reserved the power of legislation to the Board of Control as well as the Supreme Lodge, and action, by either of those bodies, was ample under the express consent of the deceased.

But we think the language used in the policy sued on to wit: "The full compliance by the assured with all the laws governing this rank, now in force, or that may hereafter be enacted, by the Supreme Lodge Knights of Pythias of the World, or the Board of Control of the Endowment Rank," could not be construed to confer legislative function upon the Board of Control, the mere agency of appellant, to the extent of changing the contract of insurance sued on, and injecting conditions therein by which the same might become void, the legislative function restricted by the constitution of appellant to appellant itself.

It being a well-understood rule of law that forfeitures are not favored in law, and will not be enforced, except where the acts which would make a forfeiture, are clearly shown.

Inasmuch therefore as the record in this case discloses, that the trial Court held correctly in its rulings on the evidence, instructions to the jury and in its judgment; we affirm its judgment herein.

AFFIRMED.

I, WM. C. HIPPARD, Clerk of said Appellate Court, do hereby certify the foregoing to be a true copy of the opinion of said Court in said cause, as the same appears from the records and files of my office.

[SEAL] IN TESTIMONY WHEREOF, I hereunto set my hand and the seal of said Court at Springfield, this 9th day of December, 1897.

WM. C. HIPPARD,
Clerk Appellate Court.

Syllabus.

RITTER v. MUTUAL LIFE INSURANCE COMPANY
OF NEW YORK.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE THIRD
CIRCUIT.

No. 142. Argued December 3, 6, 1897.—Decided January 17, 1898.

This was an action on six policies of insurance, all alike (except as to the amount of insurance), and in the following form: "In consideration of the application for this policy, which is hereby made a part of this contract, the Mutual Life Insurance Company of New York promises to pay at its home office in the city of New York, unto William M. Runk, of Philadelphia, in the county of Philadelphia, State of Pennsylvania, his executors, administrators or assigns, twenty thousand dollars, upon acceptance of satisfactory proofs at its home office of the death of the said William M. Runk during the continuance of this policy, upon the following condition, and subject to the provisions, requirements and benefits stated on the back of this policy, which are hereby referred to and made part hereof. The annual premium of seven hundred and eighty-two dollars shall be paid in advance on the delivery of this policy, and thereafter to the company, at its home office in the city of New York, on the tenth day of November in every year during the continuance of this contract. In witness whereof," etc. The principal defence was that the assured, when in sound mind, deliberately and intentionally took his own life, whereby the event insured against — his death — was precipitated. One of the issues was the sanity or insanity of the assured when he committed self-destruction. *Held*,

- (1) If the assured understood what he was doing, and the consequences of his act or acts, to himself as well as to others — in other words, if he understood, as a man of sound mind would, the consequences to follow from his contemplated suicide, to himself, his character, his family and others, and was able to comprehend the wrongfulness of what he was about to do, as a sane man would, then he is to be regarded as sane;
- (2) In the case of fire insurance it is well settled that although a policy, in the usual form, indemnifying against loss by fire, may cover a loss attributable merely to the negligence or carelessness of the insured, unaffected by fraud or design, it will not cover a destruction of the property by the wilful act of the assured himself in setting fire to it, not for the purpose of avoiding a peril of a worse kind but with the intention of simply effecting its destruction;
- (3) Much more should it be held that it is not contemplated by a policy taken out by the person whose life is insured and stipulating for

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the payment of a named sum to himself, his executors, administrators or assigns, that the company should be liable, if his death was intentionally caused by himself when in sound mind. When the policy is silent as to suicide, it is to be taken that the subject of the insurance, that is, the life of the assured, shall not be intentionally and directly, with whatever motive, destroyed by him when in sound mind. To hold otherwise is to say that the occurrence of the event upon the happening of which the company undertook to pay, was intended to be left to his option. That view is against the very essence of the contract;

- (4) A contract, the tendency of which is to endanger the public interests or injuriously affect the public good, or which is subversive of sound morality, ought never to receive the sanction of a court of justice or be made the foundation of its judgment;
- (5) If, therefore, a policy — taken out by the person whose life is insured, and in which the sum named is made payable to himself, his executors, administrators or assigns — expressly provided for the payment of the sum stipulated when or if the assured, in sound mind, took his own life, the contract, even if not prohibited by statute, would be held to be against public policy, in that it tempted or encouraged the assured to commit suicide in order to make provision for those dependent upon him, or to whom he was indebted. The case is not different in principle, if the policy be silent as to suicide, and the event insured, the death of the assured, is brought about by his wilful, deliberate act when in sound mind.

THE case is stated in the opinion.

Mr. Richard C. Dale and Mr. George Tucker Bispham for plaintiff in error. *Mr. John Hampton Barnes* was on their brief.

Mr. John G. Johnson for defendant in error. *Mr. Charles P. Sherman and Mr. Edward Lyman Short* were on his brief.

MR. JUSTICE HARLAN delivered the opinion of the court.

This action was brought against the Mutual Life Insurance Company of New York on six policies of life insurance, each bearing date November 10, 1891, one for \$20,000, one for \$15,000, and four for \$10,000 each. There was a verdict in its favor, upon which judgment was entered, and that judgment was affirmed in the Circuit Court of Appeals. 28 U. S. App. 612.

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The policies were all alike except as to the amount of insurance, and were in the following form :

"In consideration of the application for this policy, which is hereby made a part of this contract, the Mutual Life Insurance Company of New York promises to pay at its home office in the city of New York, unto William M. Runk, of Philadelphia, in the county of Philadelphia, State of Pennsylvania, his executors, administrators or assigns, twenty thousand dollars, upon acceptance of satisfactory proofs at its home office of the death of the said William M. Runk during the continuance of this policy, upon the following condition, and subject to the provisions, requirements and benefits stated on the back of this policy, which are hereby referred to and made part hereof. The annual premium of seven hundred and eighty-two dollars shall be paid in advance on the delivery of this policy, and thereafter to the company, at its home office in the city of New York, on the tenth day of November in every year during the continuance of this contract. In witness whereof," etc. The "provisions, requirements and benefits" thus made part of the policy will be referred to hereafter.

The assured died October 5, 1892, all premiums falling due previous to his death having been paid. It is not disputed that he took his own life.

In the affidavit of defence filed by the insurance company, it is stated that at or about the time of the execution of the policies in suit, Runk held policies upon his life to the extent of \$315,000 issued to him by other companies; that during the year 1892 he effected additional insurance to a considerable amount, the total amount at or about the time of his death being \$500,000; that prior to taking the additional insurance of \$200,000, he was indebted in a very large amount by reason of the improper use of moneys entrusted to him in a fiduciary and in a quasi-fiduciary capacity; that he was without resources of his own sufficient to meet the amount of that indebtedness; that he was confronted with the fear of being convicted of breach of trust, and was desirous to protect pecuniarily those whom he had injured; that he deliberately determined to commit suicide for the purpose of escaping the

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necessity of meeting those whose confidence had been betrayed, and with the intention, through moneys expected to be paid on his policies of insurance, to liquidate wholly or in part the debts owing by him; that he deliberately and intentionally took his life, being at the time in sound mind and in the full possession of his mental faculties; and that his suicide was not the result of nor occasioned by mental unsoundness, but was the act of a man mentally and morally able to understand all the consequences thereof.

The affidavit of defence also contained the following statements:

"The policies of insurance sued upon contain a reference to the application therefor, which is made a part of the contract of insurance. A copy of this application is hereto attached, which, it is prayed, may be taken as a part of this affidavit. Under the advice of counsel the defendant avers that this application is a part of said contract, and that the contract of insurance was a contract made in the State of New York, and to be interpreted by, and in accordance with, the laws of that State.

"The policies of insurance sued upon were delivered to the said Runk upon the faith of an independent contract entered into by him, embodied in the said application, to the effect that if such policies should be granted, he, the said Runk, did, 'warrant and agree . . . that I will not die by my own act, whether sane or insane, during the said period of two years' — said period of two years dating from the 6th day of November, 1891.

"The said Runk did, within the period of two years, commit a breach of said contract by killing himself, as has been before stated, in the way and manner above recited. By reason of the breach of said contract, and only by reason of such breach, the policy of insurance matured, and damages occasioned by such breach are equivalent in amount to that demanded under the policies."

Each of the applications for policies signed by the assured and attached to the affidavit of defence contained the following:

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"I hereby warrant and agree . . . not to engage in any specially hazardous occupation or employment during the next two years following the date of issue of the policy for which application is hereby made, and also not to engage in any military or naval service, in time of war, during the continuance of the policy, without first obtaining permission from this company ; I also warrant and agree that I will not die by my own act, whether sane or insane, during the said period of two years."

At the trial below the defendant offered in evidence Runk's application for insurance. This was objected to on the ground that the application was not attached to the policy, and under an act of the General Assembly of Pennsylvania approved May 11, 1881, could not, for that reason, be considered as part of the contract, or be admitted in evidence. The defendant, by counsel, stated at the time that the paper was not offered for the purpose of making it as an "application" part of the contract, but to prove that an independent, collateral, contemporaneous agreement was entered into by which Runk stipulated that he would not die by his own act, whether sane or insane, during the period of two years. The objection to this evidence was sustained, Judge Butler, who presided at the trial in the Circuit Court, observing : "The representation or statement or agreement, call it by whatever name you choose, is in my estimation a part of the application for insurance, and it constitutes a condition on which the policy was applied for and obtained, as much so as any representation contained in the paper itself, and it is therefore by the statute excluded by reason of the fact that a copy was not attached to the policy. . . . The statute intended that the policy shall exhibit on its face, or the policy in connection with whatever it refers to shall exhibit to the insured the conditions on which he holds the policy. The object of this would be to limit the policy of insurance, to qualify it, to make it available only in case the party lived up to this contract."

The statute of Pennsylvania to which reference was made is in these words: "That all life and fire insurance policies upon the lives or property of persons within this Common-

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wealth, whether issued by companies organized under the laws of this State, or by foreign companies doing business therein, which contain any reference to the application of the insured or the constitution, by-laws or other rules of the company, either as forming part of the policy or contract between the parties thereto, or having any bearing on said contract, shall contain, or have attached to said policies, correct copies of the application, as signed by the applicant and the by-laws referred to; and, unless so attached and accompanying the policy, no such application, constitution or by-laws shall be received in evidence, in any controversy between the parties to, or interested in, the said policy, nor shall such application or by-laws be considered a part of the policy or contract between such parties." Laws of Pennsylvania, 1881, No. 23, p. 20.

Whether the Circuit Court erred in excluding the application which, by the terms of the contract, constituted the consideration of the company's promise to pay, is a question that need not be considered. If error was committed in this particular, it was one for the benefit of the plaintiff in the action; for, if the application had been admitted in evidence as part of the contract of insurance, the agreement and warranty of the assured not to die by his own act, whether sane or insane, within two years from the date of the policy, would have precluded any judgment against the insurance company. *Travellers' Ins. Co. v. McConkey*, 127 U. S. 661, 666. Upon this writ of error therefore we must assume that the contract of insurance contained no such agreement or warranty by the assured, nor any express condition avoiding the policy in case of suicide. Besides, the defendant does not insist that this court should determine the rights of the parties upon the basis that the application of Runk constituted part of the contract of insurance. It may be added that we do not wish to be understood as expressing any opinion upon the question whether the Circuit Court erred either in its construction of the Pennsylvania statute of 1881, or in applying that statute to the policies here in suit.

At the trial in the Circuit Court, the plaintiff submitted the following points:

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1. The evidence was not sufficient to warrant the jury in finding that the deceased entered into the contracts of insurance evidenced by the policies sued upon with the intention of defrauding the company.

2. The evidence was not sufficient to warrant the jury in finding that the deceased entered into the contracts of insurance with the intention of committing suicide.

3. The evidence upon the part of the defendant did not warrant any inference of fact constituting a defence in law to the plaintiff's right to recover the amount due upon the policies.

4. The mere fact that the insured committed suicide did not, standing alone, avoid the policies, there being no condition in them to that effect.

5. If one whose life is insured intentionally kills himself when his reasoning faculties are so far impaired by insanity that he is unable to understand the moral character of his act, even if he does understand its physical nature, consequence and effect, such self-destruction will not of itself prevent recovery upon the policies.

The company submitted the following points as the basis of instructions to the jury :

1. There could be no recovery by the estate of a dead man of the amount of policies of insurance upon his life, if he takes his own life designedly, whilst of sound mind.

2. If the jury found that Runk committed suicide when he was of sound mind, being morally and mentally conscious of the act he was about to commit, of its consequences, and of its nature, with the deliberate intent to secure to his estate and to his creditors, the amount of the policies sued upon, there could be no recovery.

3. If the jury found that Runk obtained the policies of insurance sued upon at a time when he was insolvent and an embezzler, with the intent thereby to secure, in case of his death, from the defendant, a fund with which to pay those to whom he was indebted, and whose property he had embezzled, and subsequently committed suicide, whilst of sound mind, with the deliberate intent to carry out this scheme, there could be no recovery.

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4. The defendant was entitled to set off the loss occasioned by the failure of Runk to keep his agreement not to die by his own hand within two years of the date thereof; and the amount of this loss cannot be less than that of the policies sued upon.

The court disaffirmed the plaintiff's first, second and third points without comment. It disaffirmed the plaintiff's fourth point relating to the effect upon the rights of the assured of suicide standing alone, and affirmed the defendant's first point relating to the same matter.

The plaintiff's fifth point was affirmed, the court, however, accompanying its affirmance of that point with some observations to be presently referred to.

It will be observed that the plaintiff's first and second points assumed that the evidence was not sufficient to warrant a finding that the assured entered into the contracts of insurance with the intention either to defraud the company or to commit suicide. The court rightly refused to so instruct the jury. When the last policies were taken out by Runk he was carrying insurance on his life for an amount large enough to require annual premiums of about \$12,000. His income, so far as the record shows, was inadequate to meet such a burden. And yet, in 1891, he largely increased the insurance on his life, and added about \$8000 to the sum to be paid annually for premiums. Besides these facts, it appeared that on the day before his death he avowed that his debts must be paid, and that they could only be paid with his life. That avowal was in a letter written to his partner, in which he said that he had deceived the latter, and could only pay his debts *with his life*. That letter concluded: "This is a sad ending of a promising life, but I deserve all the punishment I may get, only I feel my debts must be paid. This sacrifice will do it, and only this. I was faithful until two years ago. Forgive me. Don't publish this." On the same day he wrote to his aunt, to whom he was indebted in a large sum, saying, among other things: "Forgive me for the disgrace I bring upon you, but it is the only way I can pay my indebtedness to you." In addition, he left for the guidance of his executor a memoran-

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dum of his business affairs, prepared just before his death, and which tended to show that he was at that time entirely himself.

In view of these and other facts established by the evidence, the court did not err in disaffirming the first and second of plaintiff's points. We may add that, under the charge to the jury, it became unnecessary for them to inquire whether the policies were taken out with the intention of defrauding the insurance company or of committing suicide. The court said to the jury: "What constitutes insanity, in the sense in which we are using the term, has been described to you, and need not be repeated. If this man understood the consequences and effects of what he was doing or contemplating, to himself and to others, if he understood the wrongfulness of it, as a sane man would, then he was sane, so far as we have occasion to consider the subject; otherwise he was not. Here the insured committed suicide, and, as the evidence shows, did it for the purpose, as expressed in his communication to the executor of his will, as well as in letters written to his aunt and his partner, of enabling the executor to recover on the policies, and use the money to pay his obligations. I therefore charge you that if he was in a sane condition of mind at the time, as I have described, able to understand the moral character and consequences of his act, his suicide is a defence to this suit. The only question, therefore, for consideration is this question of sanity. There is nothing else in the case. That he committed suicide, and committed it with a view to the collection of this money from the insurance companies and having it applied to the payment of his obligations, is not controverted, and not controvertible. It is shown by his own declaration, possibly not verbal, but written. The only question, therefore, is whether or not he was in a sane condition of mind, or whether his mind was so impaired that he could not, as I have described, properly comprehend and understand the character and consequences of the act he was about to commit. In the absence of evidence on the subject he must be presumed to have been sane. The presumption of sanity is not overthrown by the act of committing suicide. Suicide

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may be used as evidence of insanity, but standing alone it is not sufficient to establish it. . . . If you find him to have been insane, as I have described, your verdict will be for the plaintiff. Otherwise it will be for the defendant."

It thus appears that the case was placed before the jury upon the single issue as to the alleged insanity of the assured at the time he committed suicide, and with a direction to find for the plaintiff if the assured was insane at that time, and for the company if he was then of sound mind.

Assuming that the jury obeyed the instructions of the court, their verdict must be taken as finding that the assured was not insane at the time he took his life. We must then inquire whether the observations of the trial court on the subject of insanity were liable to objection.

We have seen that the plaintiff asked the court to instruct the jury that if the assured intentionally killed himself when his reasoning faculties were so far impaired by insanity that he was unable to understand the moral character of his act, even if he did understand its physical nature, consequence and effect, such self-destruction would not of itself prevent recovery upon the policies.

This was the only instruction asked by the plaintiff which undertook to define insanity, and, as before stated, it was given by the court. But in giving it the court said: "We must understand what is meant and intended by the term 'moral character of his act.' It is a point which has been used by the courts, and is correctly inserted in the term; but it is a term which might be misunderstood. We are not to enter the domain of metaphysics in determining what constitutes insanity, so far as the subject is involved in this case. If Mr. Runk understood what he was doing, and the consequences of his act or acts, to himself as well as to others—in other words, if he understood, as a man of sound mind would, the consequences to follow from his contemplated suicide, to himself, his character, his family and others, and was able to comprehend the wrongfulness of what he was about to do, as a sane man would—then he is to be regarded by you as sane. Otherwise he is not." Substantially the same obser-

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vations were made in that part of the charge, which is above given.

The plaintiff insists that the definition of insanity, as given by the trial court, was much narrower than was required or permitted by the decisions of this court. It is said that the impairment not only of the moral vision but also of the will, leaving the deceased in a condition of inability to resist the impulse of self-destruction, has been accepted by this court as describing a phase of insanity or mental unsoundness. One of the cases to which the plaintiff referred in support of this view is *Davis v. United States*, 165 U. S. 373, 378, which was a prosecution for murder. It was there held that the accused was not prejudiced by the following instruction given to the jury: "The term 'insanity' as used in this defence means such a perverted and deranged condition of the mental and moral faculties as to render a person incapable of distinguishing between right and wrong, or unconscious at the time of the nature of the act he is committing; or where, though conscious of it and able to distinguish between right and wrong, and know that the act is wrong, yet his will, by which I mean the governing power of his mind, has been otherwise than voluntarily so completely destroyed that his actions are not subject to it, but are beyond his control." This was substantially what had been held by this court in previous cases. *Life Ins. Co. v. Terry*, 15 Wall. 580; *Bigelow v. Berkshire Life Ins. Co.*, 93 U. S. 284; *Insurance Co. v. Rodel*, 95 U. S. 232; *Manhattan Life Ins. Co. v. Broughton*, 109 U. S. 121; *Connecticut Life Ins. Co. v. Lathrop*, 111 U. S. 612; *Accident Ins. Co. v. Crandal*, 120 U. S. 527.

In *Terry's case*, above cited,—which was an action upon a life policy declaring the policy void if the assured died by his own hand,—it became necessary to instruct the jury on the subject of insanity. The court said: "We hold the rule on the question before us to be this: If the assured, being in the possession of his ordinary reasoning faculties, from anger, pride, jealousy or a desire to escape from the ills of life, intentionally takes his own life, the proviso attaches, and there can be no recovery. If the death is caused by the voluntary

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act of the assured, he knowing and intending that his death shall be the result of his act, but when his reasoning faculties are so far impaired that he is not able to understand the moral character, the general nature, consequences and effect of the act he is about to commit, or when he is impelled thereto by an insane impulse which he has not the power to resist, such death is not within the contemplation of the parties to the contract, and the insurer is liable."

Recurring to the ruling of the court in the present case, it is not perceived that the plaintiff had any ground to complain that its definition of insanity was too strict or too narrow. His fifth point, in general terms, defined insanity as being a condition in which the reasoning faculties are so far impaired that the person alleged to be insane when committing self-destruction was unable to understand the moral nature of his act, even if he understood its physical nature. This definition was not rejected. On the contrary, it was accepted, the court at the time making some observations deemed necessary to show what, in law, was meant by the words "moral nature of his act." By those observations, the jury were informed that if the assured understood what he was doing, and the consequences of his act or acts to himself and to others—that is, if he understood, as a man of sound mind would, the consequences to follow from his contemplated suicide, to himself, his character, his family and others, and was able to comprehend the wrongfulness of what he was about to do, as a sane man would—then he was to be regarded as sane; otherwise, not.

It is suggested that the attention of the jury should have been brought specifically or more directly to the fact that unsoundness of mind exists when there is an impulse to take life which weakened mental and moral powers cannot withstand—a condition in which there is no continued existence of a governing will strong enough to resist the tendency to self-destruction. But the words of the charge, although of a general character, substantially embodied these views. The court stated the principal elements of a condition of sanity as contrasted with insanity. What it said was certainly as specific as the instruction asked by the plaintiff. If the plain-

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tiff desired a more extended definition of insanity than was given, his wishes, in that respect, should have been made known. The court having affirmed his view of what was evidence of insanity, and such affirmance having been accompanied by observations that brought out with more distinctness and fulness what was meant by the words "moral character of his act," the plaintiff has no ground to complain; for nothing said by the court upon the question of insanity was erroneous in law or inconsistent with that which the plaintiff asked to be embodied in the charge.

No error of law having been committed in respect of the issue as to the insanity of the assured, it is to be taken as the result of the verdict that he was of sound mind when he took his life.

This brings us to the question whether the insurance company was liable — assuming that it was not a part of the contract enforceable in Pennsylvania, that the assured should "not die by his own act whether sane or insane," within two years from the date of the policy.

It is contended that the court erred in saying to the jury, as in effect it did, that intentional self-destruction, the assured being of sound mind, is in itself a defence to an action upon a life policy, even if such policy does not, in express words, declare that it shall be void in the event of self-destruction when the assured is in sound mind. But is it not an implied condition of such a policy that the assured will not purposely, when in sound mind, take his own life, but will leave the event of his death to depend upon some cause other than wilful, deliberate self-destruction? Looking at the nature and object of life insurance, can it be supposed to be within the contemplation of either party to the contract that the company shall be liable upon its promise to pay, where the assured, in sound mind, by destroying his own life, intentionally precipitates the event upon the happening of which such liability was to arise?

Life insurance imports a mutual agreement, whereby the insurer, in consideration of the payment by the assured of a named sum annually or at certain times, stipulates to pay a

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larger sum at the death of the assured. The company takes into consideration, among other things, the age and health of the parents and relatives of the applicant for insurance, together with his own age, course of life, habits and present physical condition; and the premium exacted from the assured is determined by the probable duration of his life, calculated upon the basis of past experience in the business of insurance. The results of that experience are disclosed by standard life and annuity tables showing at any age the probable duration of life. These tables are deemed of such value that they may be admitted in evidence for the purpose of assisting the jury in an action for personal injury, in which it is necessary to ascertain the compensation the plaintiff is entitled to recover for the loss of what he might have earned in his trade or profession but for such injury. *Vicksburg & Meridian Railroad v. Putnam*, 118 U. S. 545, 554. If a person should apply for a policy expressly providing that the company should pay the sum named if or in the event the assured, at any time during the continuance of the contract, committed self-destruction, being at the time of sound mind, it is reasonably certain that the application would be instantly rejected. It is impossible to suppose that an application of that character would be granted. If experience justifies this view, it would follow that a policy stipulating generally for the payment of the sum named in it upon the death of the assured, should not be interpreted as intended to cover the event of death caused directly and intentionally by self-destruction whilst the assured was in sound mind, but only death occurring in the ordinary course of his life.

That the parties to the contract did not contemplate insurance against death caused by deliberate, intentional self-destruction when the assured was in sound mind, is apparent from the "provisions, requirements and benefits" referred to in and made part of the policy. They show that the policy was issued on the twenty-year distribution plan, and was to be credited with its distributive share of surplus apportioned at the expiration of twenty years from the date of issue; that, after three full annual premiums were paid, the company

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would, upon the legal surrender of the policy, before default in the payment of any premium, or within six months thereafter, issue a non-participating policy for a paid up insurance, payable as provided, for the amount required by the provisions of the New York statute of May 21, 1879, Laws of New York, c. 347; that the assured was entitled to surrender the policy at the end of the first period of twenty years "and the full reserve computed by the American table of mortality, and four per cent interest, and the surplus, as defined above, will be paid therefor in cash;" that if the assured surrendered the policy the total cash value at the option of the policy holder should be applied "to the purchase of an annuity for life, according to the published rates of the company at the time of surrender;" that after two years from the date of the policy the only conditions that should be binding on the holder of the policy were that "he shall pay the premiums at the time and place and in the manner stipulated in the policy, and that the requirements of the company as to age, and military or naval service in time of war shall be observed;" that in all other respects, if the policy matured after the expiration of two years, the payment of the sum insured should not be disputed; and that the party whose life was insured should always wear a suitable truss. These provisions of the contract tend to show that the death referred to in the policy was a death occurring in the ordinary course of the life of the assured, and not by his own violent act designed to bring about that event.

In the case of fire insurance it is well settled that although a policy, in the usual form, indemnifying against loss by fire, may cover a loss attributable merely to the negligence or carelessness of the insured, unaffected by fraud or design, it will not cover a destruction of the property by the wilful act of the assured himself in setting fire to it, not for the purpose of avoiding a peril of a worse kind but with the intention of simply effecting its destruction. Much more should it be held that it is not contemplated by a policy taken out by the person whose life is insured and stipulating for the payment of a named sum to himself, his executors, administrators or assigns,

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that the company should be liable, if his death was intentionally caused by himself when in sound mind. When the policy is silent as to suicide, it is to be taken that the subject of the insurance, that is, the life of the assured, shall not be intentionally and directly, with whatever motive, destroyed by him when in sound mind. To hold otherwise is to say that the occurrence of the event upon the happening of which the company undertook to pay, was intended to be left to his option. That view is against the very essence of the contract.

There is another consideration supporting the contention that death intentionally caused by the act of the assured when in sound mind—the policy being silent as to suicide—is not to be deemed to have been within the contemplation of the parties; that is, that a different view would attribute to them a purpose to make a contract that could not be enforced without injury to the public. A contract, the tendency of which is to endanger the public interests or injuriously affect the public good, or which is subversive of sound morality, ought never to receive the sanction of a court of justice or be made the foundation of its judgment. If, therefore, a policy—taken out by the person whose life is insured, and in which the sum named is made payable to himself, his executors, administrators or assigns—expressly provided for the payment of the sum stipulated when or if the assured, in sound mind, took his own life, the contract, even if not prohibited by statute, would be held to be against public policy, in that it tempted or encouraged the assured to commit suicide in order to make provision for those dependent upon him, or to whom he was indebted.

Is the case any different in principle if such a policy is silent as to suicide, and the event insured against—the death of the assured—is brought about by his wilful, deliberate act when in sound mind? Light will be thrown on this question by some of the adjudged cases, having more or less bearing upon the precise point now before this court for determination.

The plaintiff insists that the question just stated is answered in the affirmative by the opinion in *Life Ins. Co. v. Terry*,

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15 Wall. 580. As before stated, that was an action upon a life policy, containing the condition that it should be void if the assured should "die by his own hand;" and the controlling question was whether the condition embraced the case of an assured who committed self-destruction at a time when his reasoning faculties were so far impaired that he was unable to comprehend the moral character, the general nature, consequences and effect of the act he was about to commit, or when he was impelled thereto by an insane impulse which he had not the power to resist. There was no question in that case as to the effect upon the rights of the parties of intentional self-destruction, where the policy contained no provision as to suicide. In the course of the review of the adjudged cases reference was made in the opinion of this court to *Borradaile v. Hunter*, 5 Mann. & Gr. 639, and also to *Hartman v. Keystone Ins. Co.*, 21 Penn. St. 466, 479. In the former case it appeared that the assured threw himself into the Thames and was drowned, and the jury found that he voluntarily threw himself into the water, knowing at the time that he should thereby destroy his life, and intending thereby to do so, but at the time of committing the act he was not capable of judging between right and wrong. The question was as to the liability of the insurance company on a policy issued to the assured containing a clause or proviso that the policy should be void if "the assured should die by his own hands, or by the hands of justice, or in consequence of a duel." Maule, Erskine and Coltman, JJ., held that the company was not liable, while Tindall, C. J., was of the opinion that the proviso embraced cases of felonious suicide only, and not cases of self-destruction whilst the assured was under the influence of frenzy, delusion or insanity. In the latter case it appeared that the assured committed self-destruction by taking arsenic. The Supreme Court of Pennsylvania held that there could be no recovery, Chief Justice Black saying: "The conditions of the policy are, that it shall be null and void 'if the assured shall die by his own hand, in or in consequence of a duel, or by the hands of justice,' etc. The plaintiff argues that the first clause here quoted

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does not embrace a suicide committed by swallowing arsenic. Where parties have put their contracts in writing their rights are fixed by it. But the contract is what they meant it to be, and when we can ascertain their meaning from the words they have used, we must give it effect. One rule of interpretation is, that we must never attribute an absurd intent if a sensible one can be extracted from the writing. No absurdity could be greater than a stipulation against suicide in a duel. The words 'die by his own hand,' must, therefore, be disconnected from those which follow. Standing alone, they mean any sort of suicide. Besides this, the court was very plainly right in charging that if no such condition had been inserted in the policy, a man who commits suicide is guilty of such a fraud upon the insurers of his life that his representatives cannot recover for that reason alone." Mr. Justice Hunt, delivering the opinion in *Terry's case*, made an observation in relation to the two cases just cited which is supposed to be favorable to the plaintiff's contention. He said: "In *Hartman v. Keystone Ins. Co.* the doctrine of *Borradaile v. Hunter* was adopted, with the confessedly unsound addition that suicide would avoid a policy although there was no condition to that effect in the policy." This observation of the learned justice was irrelevant to the case before the court, and cannot be regarded as determining the point in judgment. If it was meant there could be a recovery by the personal representative of an assured who took out the policy, and who, in sound mind, took his own life—the policy being silent in reference to suicide—we cannot concur in that view.

In *N. Y. Mut. Life Ins. Co. v. Armstrong*, 117 U. S. 591, 600, which was an action by the assignee of a life policy, the defence, in part, being that the assignee murdered the assured in order to get the benefit of the policy, Mr. Justice Field, speaking for this court, said: "Independently of any proof of the motives of Hunter [the assignee] in obtaining the policy, and even assuming that they were just and proper, he forfeited all rights under it, when, to secure its immediate payment, he murdered the assured. It would be a reproach to

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the jurisprudence of the country if one could recover insurance money payable on the death of a party whose life he had feloniously taken. As well might he recover insurance money upon a building that he had wilfully fired."

In *Hatch v. Mutual Life Ins. Co.*, 120 Mass. 550, 552, it appears that a policy of insurance on the life of a married woman provided that "if the said person whose life is hereby insured shall die by her own act or hand, whether sane or insane, the policy should be null and void." It was in proof that the assured died by reason of a miscarriage produced by an illegal operation performed upon and voluntarily submitted to by her with intent to cause an abortion, and without any justifiable medical reason for such an operation. The court, observing that this voluntary act on the part of the assured was condemned alike by the laws of nature and by the laws of all civilized States, and was known by the assured to be dangerous to life, said: "We are of opinion that no recovery can be had in this case, because the act on the part of the assured causing death was of such a character that public policy would preclude the defendant from insuring her against its consequences; for we can have no question that a contract to insure a woman against the risk of her dying under or in consequence of an illegal operation for abortion would be contrary to public policy, and could not be enforced in the courts of this Commonwealth." The report of the case shows that it was decided without reference to the questions raised by the special clauses of the policy.

The subject was considered by the Supreme Court of Alabama in *Supreme Commandery &c. v. Ainsworth*, 71 Alabama, 436, 446. Chief Justice Brickell, delivering the unanimous judgment of that court, said:

"In all contracts of insurance, there is an implied understanding or agreement that the risks insured against are such as the thing insured, whether it is property, or health, or life, is usually subject to, and the assured cannot voluntarily and intentionally vary them. Upon principles of public policy and morals, the fraud, or the criminal misconduct of the assured is, in contracts of marine or of fire insurance, an

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implied exception to the liability of the insurer. *Waters v. Merchants' Louisville Ins. Co.*, 11 Pet. 213; *Citizens' Ins. Co. v. Marsh*, 41 Penn. St. 386; *Chandler v. Worcester Mut. Fire Ins. Co.*, 3 Cush. 328. Death, the risk of life insurance, the event upon which the insurance money is payable, is certain of occurrence; the uncertainty of the time of its occurrence is the material element and consideration of the contract. It cannot be in the contemplation of the parties, that the assured, by his own criminal act, shall deprive the contract of its material element; shall vary and enlarge the risk, and hasten the day of payment of the insurance money. The doctrine asserted in *Fauntleroy's case*, that death by the hands of public justice, the punishment for the commission of crime, avoids a contract of life insurance, though it is not so expressed in the contract, has not, so far as we have examined, been questioned, though the case itself may have led to the very general introduction of the exception into policies. The same considerations and reasoning which support the doctrine seem to lead, of necessity, to the conclusion, that voluntary, criminal self-destruction, suicide, as defined at common law, should be implied as an exception to the liability of the insurer, or, rather, as not within the risks contemplated by the parties, reluctant as the courts may be to introduce by construction or implication exceptions into such contracts, which usually contain special exceptions." Again: "The fair and just interpretation of a contract of life insurance, made with the assured, is, that the risk is of death proceeding from other causes than the voluntary act of the assured, producing, or intended to produce it;" and that "the extinction of life by disease, or by accident, not suicide, voluntary and intentional, by the assured, while in his senses, is the risk intended; and it is not intended that, without the hazard of loss, the assured may safely commit crime."

In support of the general proposition that the law will not enforce contracts and agreements that are against the public good, and, therefore, are forbidden by public policy, reference is often made to the case of *The Amicable Society &c. v. Bolland*, 4 Bligh, N. S. 194, 211, known as *Fauntleroy's case*.

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That was an action by assignees in bankruptcy to secure the amount due on a policy of insurance stipulating for the payment of a certain sum, upon the death of Fauntleroy, to his executors, administrators or assigns. The assured was convicted of forgery, and for that offence was executed. The Lord Chancellor, after observing that the question was whether the parties representing and claiming under one who effects insurance upon his life, and afterwards commits a capital felony, for which he was tried and executed, could recover the amount named in the policy, said: "It appears to me that this resolves itself into a very plain and simple consideration. Suppose that in the policy itself this risk had been insured against: that is, that the party insuring had agreed to pay a sum of money year by year, upon condition, that in the event of his committing a capital felony, and being tried, convicted and executed for that felony, his assignees shall receive a certain sum of money—is it possible that such a contract could be sustained? Is it not void upon the plainest principles of public policy? Would not such a contract (if available) take away one of those restraints operating on the minds of men against the commission of crimes? namely, the interest we have in the welfare and prosperity of our connections? Now, if a policy of that description, with such a form of condition inserted in it in express terms, cannot, on grounds of public policy, be sustained, how is it to be contended that in a policy expressed in such terms as the present, and after the events which have happened, that we can sustain such a claim? Can we, in considering this policy, give to it the effect of that insertion, which if expressed in terms would have rendered the policy, as far as that condition went at least, altogether void?"

Referring to that case, Bunyon in his work on Life Insurance says: "It would render those natural affections which make every man desirous of providing for his family, an inducement to crime; for the case may be well supposed of a person insuring his life for that purpose, with the intention of committing suicide. For a policy, moreover, to remain in force when death arose from any such cause would be a fraud

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upon the insurers, for a man's estate would thereby benefit by his own felonious act. Hence the rule of law when there is no condition whatever, but in that case, if the suicide or self-destruction takes place when the assured is *insane* and not accountable for his acts, the rule arising from public policy does not apply, and his representatives are entitled to the policy money." 3d ed. p. 96; 2d ed. p. 72.

In *Moore v. Woolsey*, 4 Ell. & Bl. 243, 254, in which the question was as to the rights of an assignee under a policy providing that if the assured should die by duelling or by his own hand, or the hand of justice, it should be void as to the personal representative of the assured, Lord Campbell, C. J., said that, "if a man insures his life for a year, and commits suicide within the year, his executors cannot recover on the policy, as the owner of a ship who insures her for a year cannot recover upon the policy if within the year he causes her to be sunk: a stipulation that, in either case, upon such an event the policy should give a right of action, would be void."

For the reasons we have stated, it must be held that the death of the assured, William M. Runk, if directly and intentionally caused by himself, when in sound mind, was not a risk intended to be covered, or which could legally have been covered, by the policies in suit.

The case presents other questions, but they are of minor importance, and do not affect the substantial rights of the parties.

We perceive no error of law in the record, and the judgment is

Affirmed.

MR. JUSTICE PECKHAM did not take part in the consideration or decision of this case.